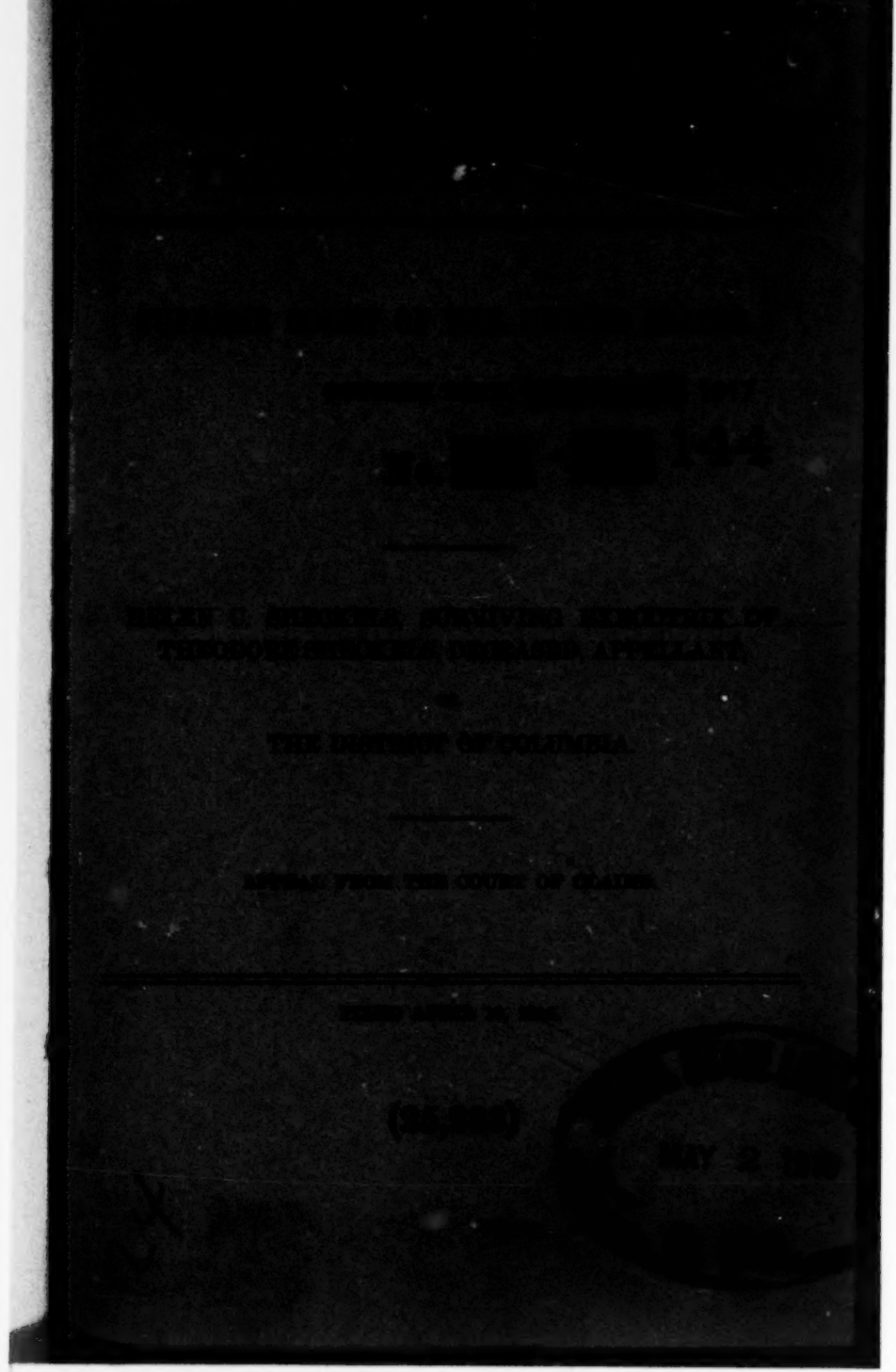

(25,233)

20192

# SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1915.

## No. 950.

HELEN C. SHECKELS, SURVIVING EXECUTRIX OF THEODORE SHECKELS, DECEASED, APPELLANT,

*vs.*

THE DISTRICT OF COLUMBIA.

APPEAL FROM THE COURT OF CLAIMS.

INDEX.



JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., MAY 23, 1916.

I. *Petition and Exhibits. Filed December* 15, 1880.

1 United States Court of Claims.

No. 292.

THEODORE SHECKELS
vs.
THE DISTRICT OF COLUMBIA.

Filed Dec. 15, 1880. J. R.

The Petitioner and Claimant, Theodore Sheckels, respectfully represents:

First. That he is a citizen of the District of Columbia, and resides in the city of Washington, at No. 1013 N st., N. W.

Second. That the Defendant, the District of Columbia, is a municipal corporation created and existing under and by virtue of an Act of the Congress of the United States entitled: "An act providing a permanent form of Government for the District of Columbia," approved June 11th, 1878, and contained in the U. S. S. at L., Vol. 20, pp. 102-108.

Third. That the 41st Congress of the United States at its third session passed an Act entitled: "An Act to provide a government for the District of Columbia," which was approved February 21, 1871, and will be found in the U. S. S. at L., Vol. 16, pp. 419-429, which said act was regularly revised, and will be found in the Revised Statutes of the United States relating to the District of Columbia, approved June 22d, 1874, commencing on page one (1) of said Revised Statutes.

Fourth. That the 43d Congress of the United States, first session, by which the Revised Statutes were passed, also passed an Act entitled: "An Act for the government of the District of Columbia, and for other purposes," approved June 20th, 1874, which will be found in the U. S. S. at L., Vol. 18, part 3d, pp. 116-121, which said Act and the Revised Statutes are referred to in the aforesaid Act of June 11th, 1878.

Fifth. That by the 37th section of the Act of February 21st, 1871, a Board of Public Works was created and existed until June 20th, 1874, with entire control over the streets, avenues, alleys and sewers of the said District and such other work as might be entrusted to it by the Legislative Assembly provided in the fifth section of said Act; and also with the power to make all regulations for improving the said streets, avenues, alleys, sewers, and for keeping them in repair; and also with express power to make contracts to be signed by them and the party engaged or employed to do any of the aforesaid work for the said District.

2 Sixth. That the Congress of the United States, at its last session, passed an Act entitled: "An Act to provide for the

settlement of all outstanding claims against the District of Columbia, and conferring jurisdiction on the Court of Claims to hear the same, and for other purposes," approved June 16th, 1880; and conferring upon said court original, legal and equitable jurisdiction of all claims now existing against the District of Columbia, arising out of contracts made by the late Board of Public Works and extensions thereof made by the Commissioners of the District of Columbia * * * and of all claims for work done by the order or direction of said Commissioners and accepted by them for the use, purpose or benefit of the said District of Columbia, and prior to the 14th day of March, 1876, and all certificates of the Auditor of the Board of Public Works; all certificates issued by the Auditor and Comptroller of the District of Columbia. * * * All measurements made by the Engineers of said District, of work done under contracts made since February 21st, 1871, for which no certificates have been issued to and received by the contractor or his assignee, * * * and of all claims based upon contracts made by the Board of Public Works for which no evidence of indebtedness has been issued," and other matters in said Act mentioned.

Seventh. That during the continuance of the Board of Public Works it regularly and legally entered into various contracts with one Peter McNamara, late of the District of Columbia, for the execution of a large amount of work under its control, and entrusted to its care, and among them were two contracts, numbered in the series of contracts made by said Board, as 716 and 415. That afterwards contract 415 was extended at different times in writing between the said McNamara and the Commissioners of said District to include various other work not provided for in original contract No. 415. That after the abolition of the Board of Public Works and the creation of the Commissioners of the District of Columbia, the latter approved and ratified said contracts and the extensions thereof and directed the work mentioned therein remaining undone to be performed. Contract number 415 is annexed hereto, as part hereof, marked Exhibit "A." Also one of the extensions of said contract number 415, bearing date on the 3d day of April, 1875, is annexed hereto as part hereof marked Exhibit "B."

Eighth. That under and in pursuance of said contract numbered 415, as extended by the paper marked exhibit "B," the said Peter McNamara did work and provided material for the grading and paving of D street, between 10th and 12th streets, North East, to the amount of $2,531.55. That on the 14th day of December, 1876, the authorities of the said District stated and approved the account of the said McNamara for said work at the sum aforesaid, but the same has never been paid to him or any one for him, or for
3 his use and benefit, but the same remains on file and of record in the Commissioners' office of the said District, and a copy thereof, together with a copy of the letter of approval of the Engineer of said District, transmitting the same to the said Commissioners, is filed herewith as an exhibit marked "C," and made part hereof.

That under and in pursuance of the said contract number 415,

as extended by exhibit "B," the said Peter McNamara performed work and furnished material, in grading and paving 9th street, North East, between C street and Maryland avenue, to the amount of $1,681.29, which was afterwards, on the 14th day of December, 1876, measured and approved by the Engineer of the said District, and forwarded to the said Commissioners for payment, but has never been paid. A copy of the account as stated and approved by the Engineer of said District, and his letter of approval to the said Commissioners, is filed herewith as exhibit "D," and made part hereof.

Ninth. That on the 6th day of November, 1875, the said Peter McNamara was authorized, by written letter to him directed by the Engineer of the said District, to relay the foot walk on the west side of the 7th street, from East Capitol to South A street, as extra work under said contract number 415, as will more fully appear by reference to a copy of said letter filed herewith as part hereof, and marked exhibit "E." That in pursuance of said letter the said McNamara did the work therein mentioned, and provided the necessary material therefor, and afterwards, on the 22d day of January, 1876, a bill was rendered for the same; amounting to the sum of $2,260.15, and approved by the Acting Engineer of the said District, and the same remains on file among the records of said District, but the same and no part thereof has ever been paid to said McNamara, or to any one for his use.

Tenth. That said contract numbered 716, was substantially like the said contract numbered 415 in its conditions and stipulations. That the said McNamara did a large quantity of work, and furnished much material, under the terms and conditions of said contract, and that on the 19th day of January, 1876, there was a statement of account made by the officers and agents of the said defendant for certain work done under said contract No. 716. And in such settlement there was retained by the said defendant from the amount due said McNamara on brick pavement on 6th street, between Pennsylvania avenue and K street, S. E., the sum of $262.21, to indemnify said District against loss for defective work and material, which was retained in pursuance of one of the stipulations of said contract. All of which will appear by reference to said statement of account now on file in the records of said District, voucher No. 19,608, and the same is hereby referred to as part of this petition. But there
4 was no defect in work or material, as time proved, and said McNamara became entitled to receive the said sum of $262.21; but the same never has been paid to him, or for his use and benefit.

Eleventh. That on the 24th day of December, 1875, the said Peter McNamara by your Petitioner, received a partial payment for certain work done and material furnished, in laying a brick pavement on A street, S. E., between 3rd and 9th streets, under contract 415, and that there was deducted and retained by the defendant, from the amount then due said McNamara for said work, the sum of $196.95 to indemnify said District against possible loss from defective work or material, in accordance with one of the stipulations of said contract. All of which will appear by reference to said account now on file in the records of said District, as Voucher No.

19,454, and which is hereby referred to. And your petitioner says that neither said work nor material proved defective within the time specified in said contract, and McNamara, or your petitioner, became entitled to receive said $196.95, but the same never has been paid.

Twelfth. Your petitioner further shows that on the 5th day of November, 1874, the said Peter McNamara, for a valuable consideration, by writing under his hand and seal, and duly acknowledged before a Notary Public, assigned to petitioner all his right, title and interest in and to any claim that he then had, or might thereafter have against the said District of Columbia, and all interest he might have in any and all bonds, certificates, or other form of indebtedness that might be issued by the District of Columbia, or in any money that might become due and payable to him under said contract No. 415, for work done or that might thereafter be done by him, and by said writing empowered your petitioner to collect and receive the same from said District, all which will more fully appear by reference to said assignment and power of attorney, a copy of which is filed herewith as part hereof marked exhibit "G."

Thirteenth. That on the 16th day of October, 1875, the said Peter McNamara, for a valuable consideration, made and executed to your petitioner an irrevocable power of attorney, authorizing him to receive and receipt for all money, certificates, or bonds, that might be or become due him for work done under the extension of contract No. 716. And on the 22d day of December, 1875, the said McNamara executed to your petitioner, for a valuable consideration, another power of attorney like the one above mentioned, authorizing him to receive and receipt for all money, certificates, or bonds, that might become due him under extension of contract No. 716. And on the said 22d day of December, 1875, the said Peter McNamara executed to your petitioner another power of attorney, authorizing him to receive and receipt for all money, certificates, or bonds, that might become due him for work done under the extension of contract No. 415 therein mentioned. And on the 10th day of January, 1876, the said Peter McNamara, for a valuable consideration, executed to your petitioner another power of attorney, authorizing him to receive and receipt for all money, bonds and certificates, that might become due him under contract No. 415, or any extension thereof. Said powers of attorney were filed by your petitioner in the office of the said Commissioners of the District of Columbia, and, as he believes, still remain there on file, and copies of each of them are filed herewith as part hereof marked respectively, "H," "I," "K," and "L."

Fourteenth. Your petitioner further shows that the said assignment and power of attorney, mentioned in the twelfth paragraph of this petition, and the powers of attorney mentioned in the thirteenth paragraph thereof, were each and all made and executed by the said Peter McNamara for a valuable consideration paid and furnished by your petitioner to the said McNamara. And he further says that the consideration so paid by him was large sums of money, furnished and advanced by your petitioner from time to time, as the work progressed, to enable said McNamara to perform the work and furnish

the material required and stipulated in the contracts and extensions the-eof; and the said money so furnished and advanced by your petitioner to said McNamara, amounted in the aggregate to many thousand dollars, and was actually used by the said McNamara in the execution and performance of said work; that the said assignment and powers of attorney were given to your petitioner to secure to him the repayment of the money so advanced by him, and to enable him to collect from the said District, and re-imburse himself for the money so advanced by him from time to time; that your petitioner, by virtue of the said assignment and powers of attorney, collected and received large sums from the Commissioners of the said District, for and on account of the said work done by the said McNamara under the contracts and extensions aforesaid, but there is still due him a large sum of money, on account of advances so made by him to the said McNamara to enable him to do the work mentioned in said contracts and extensions, and for which the said defendant still owes the said McNamara the sums hereinbefore mentioned. He is informed and believes and so represents, that the instrument mentioned in the twelfth paragraph of this petition and filed herewith as exhibit "G," is an absolute assignment to him, and confers upon him the right to collect and receive from the said District all money, bonds, certificates, or other evidence of indebtedness due from the said District on account of any and all work done by the said McNamara under the provisions of contract No. 415, as they originally were, or as they were afterwards extended. That all the work, the payment for which is claimed in this petition, was done under said contract 415, and the said extension thereof and the said letter filed herewith, except the sum of $262.21 retained, which petitioner is entitled to collect by virtue of the powers of at-
6 torney marked exhibits "H" and "I." That those two powers of attorney, as well as the two marked exhibits "K" and "L," were made and given for a valuable and valid consideration, and are therefore irrevocable, until the purposes for which they were given are accomplished. That the said McNamara never attempted to revoke them in his lifetime, and they are not revoked by the mere fact of his death, as your petitioner is informed and believes.

Fifteenth. That the work hereinbefore mentioned, done by the said McNamara, was well done in accordance with the terms of the said contracts, under the direction and supervision of the officers and agents of the said defendant, and was necessary and beneficial to the said District, and was accepted by its officers and agents, and has been used and still is in use by it.

Sixteenth. That by virtue of the premises aforesaid your petitioner claims judgment against the said District for the sum of six thousand, nine hundred and thirty-two dollars and fifteen cents, ($6,932.15.) with interest on $196.95 from the 24th day of December, 1875; on $262.21 from the 19th day of January, 1876; on $2,260.15 from the 22d day of January, 1876, and on $4,212.84 from the 14th day of December, 1876.

Seventeenth. That there has been no final settlement between the said McNamara or your petitioner and said District for the work

done by said McNamara as aforesaid; and that no part of your petitioner's claim as herein set forth has been rejected by the late Board of Audit, created by section six of the Act of Congress approved June 20th, 1874.

Eighteenth. That neither said contracts, nor said claims for said work have been transferred or assigned to any person or persons by your petitioner but the right to the same remains in your petitioner and that he is justly entitled to the amount herein claimed, viz: six thousand, nine hundred and seventy four dollars and fifty cents. ($6,974.50).

Nineteenth. And your petitioner further avers that he has at all times borne true allegiance to the Government of the United States and has not in any way voluntarily aided, abetted, or given encouragement to rebellion against the Government of the United States, and believes the facts as stated in said petition to be true.

Prayer.

First. Your petitioner therefore prays for judgment in due form of law against the said District of Columbia for the said sum of six thousand, nine hundred and thirty-two dollars and fifteen cents, ($6,932.15), with interest thereon as aforesaid.

Second. That the said District of Columbia may be required, by a proper order, to furnish the petitioner with all books, records, contracts, measurements, vouchers, settlements, or other memo-
7 randa in its possession relating to said contracts, and the work done thereunder, and the extra work done in connection therewith which may be necessary for a fair and proper adjudication of his said claim.

Third. And he prays for such other, further and general relief as he may be entitled to.

THEODORE SHECKELS.

WILLIAM A. COOK,
*Att'y for Pet'r.*

DISTRICT OF COLUMBIA,
*Washington County, To wit:*

Theodore Sheckels, being duly sworn, says upon oath, that he has heard the foregoing petition read, and knows the contents thereof, and that the matters therein set forth upon his own knowledge are true, and those upon information and belief he believes to be true.

THEODORE SHECKELS.

Subscribed and sworn to before me this 15th day of December, 1880.

[SEAL.] MARION DORIAN,
*Notary Public.*

WILLIAM A. COOK,
*Att'y for Pet'r.*

EXHIBIT "A."

This Contract,

Made and concluded this twenty-fourth day of July, in the year one thousand eight hundred and seventy-two, by and between Henry D. Cooke, Alexander R. Shepherd, James A. Magruder, A. B. Mullett, and I. P. Brown, constituting and composig the Board of Public Works of the District of Columbia of the first part, and Peter McNamara, of Washington, D. C., of the second part, witnesseth:

First. That the said party of a second part has agreed, and by these presents doth agree with the said party of the first part for the consideration hereinafter mentioned and contained, and under the penalty expressed in a bond bearing even date with these presents, and hereunto annexed to furnish at his own proper cost and expense all the necessary materials and labor, and in a good, firm and substantial manner to grade C street, north, between Fourth and Fifteenth streets, east, and D street, north, between Fourth and Fifteenth streets, east, in the city of Washington, D. C., the said grading to be done and completed in accordance in every respect with the specifications following, to wit:

8 Board of Public Works,

District of Columbia.

*Specifications for Grading Streets, &c.*

The base of excavation, including the sidewalks, will be — feet wide. The road-bed proper will be — feet between curbs, and must be graded to — inches below the level of the curb at the centre of the street and — inches below the level of the curb at the side, leaving the road-bed a fall of — inches from the centre to the sides.

The material obtained in grading will be deposited where directed by the Chief Engineer of the Board of Public Works, and no sand, gravel, cobble stones, curb bricks, or pipe obtained in the excavation or found on the premises shall be considered the property of the party of the second part, nor used by him or them, except as hereinafter prescribed.

The filling must be done in layers not exceeding eighteen inches in thickness, so that the same may be well compressed by the driving of the carts over it.

The excavations will include only the road bed, side-walks, and the slope from them to the building line, according to the grade to be given by the Chief Engineer of the Board of Public Works.

No more grading must be commenced at any one time than one square, except by permission of the Chief Engineer; and the filling must be brought up to grade established and shown by plans before the work can be accepted as completed.

In the allowance for hauling, the length of the haul over two hundred feet, and the amount of material hauled, will be determined

on an average basis by the Chief Engineer of the Board of Public Works, whose decision shall be final. All materials, such as curb, cobble, brick, &c., removed from the premises, and deposited under the directions of the Chief Engineer, will be paid for at the rates for hauling established by the Board of Public Works.

All measurements will be made in the excavation only.

Second. It is further agreed that the said party of the first part shall appoint, from time to time, such persons or person as may be by said party deemed proper to inspect the material to be furnished and the work to be done under this contract, and that such persons or person shall have any and all opportunity and privileges which may be necessary to enable them to faithfully make the in-
9 spection aforesaid.

Third. It is further agreed that the work under this contract shall be commenced on or before the twenty-ninth day of July, one thousand eight hundred and seventy-two.

Fourth. It is further agreed that the said party of the first part may, on notice to the party of the second part, suspend work under this contract, but if not suspended, it shall be completed within (90) ninety days from the date fixed for its commencement, and that the said work shall be sub-let without the consent in writing of the said party of the first part, and that any sub-letting or assignment, without such consent shall work a forfeiture of this contract.

Fifth. It is further agreed that if, at any time, the party of the first part shall be of opinion that the said work, or any part thereof, is unnecessarily delayed, or that the said contractor is willfully violating any of the conditions or covenants of this contract, or is executing the same in bad faith, all of the work may be discontinued under this contract, or any part thereof; and the said party of the first part shall thereupon have the power to place such and so many persons as may be deemed advisable by contract or otherwise, to work at and complete the work herein described, or any part thereof, and to use such materials as may be found upon the line of said work or to procure other materials for the completion of the same, and to charge the expense of said labor and materials to the party of the second part, and the expense so charged shall be deducted and paid by the party of the first part out of such moneys as may be then due, or may at any time thereafter grow due to the said party of the second part, under and by virtue of this agreement, or any part thereof; and in case such expense *less is* than the sum which would have been payable under this contract if the same had been completed, the party of the second part shall be entitled to receive the difference; and in case such expense shall exceed the last said sum the amount of such excess shall be paid to the party of the first part by the party of the second part.

Sixth. It is further agreed that all loss or damage arising out of the nature of the work to be done under this agreement, or from any unfor-seen obstruction or difficulties which may be encountered in the prosecution of the same or from the action of the elements, or from incumbrances to individuals' property, or otherwise on the line of the work, or adjacent thereto, shall be sustained by the contractor.

Seventh. It is further agreed that the said party of the second part shall punctually pay the workmen who shall be employed by him or work under this contract in cash current, and not in what is denominated store pay or orders, and that he will from time to time, and as often as may be required by said party of the first part, furnish to said party satisfactory evidence that all persons who have done work or furnished materials have been paid as herein required. And if such evidence is not furnished such sum or sums as may be necessary for such payment or claims shall be retained by said party of the first part until the said claims shall be fully satisfied.

Eighth. And it is further agreed that partial payment shall be made by the duly authorized financial agent of the said party of the first part on the monthly estimates of the Chief Engineer of the Board of Public Works aforesaid, and that whenever the said Chief Engineer aforesaid shall certify in writing that the party of the second part has completely performed this contract on his part, and shall submit with said certificate, his estimate of the amount due the party of the second part, then within thirty (30) days as hereinafter provided, the said party of the second part shall be entitled to receive the full amount due under this contract, deducting therefrom all previous partial payments which may have been made as hereinafter mentioned.

And it is further expressly agreed that no money shall become due and payable under this contract except upon the certificate of said Engineer as hereinbefore provided, and the said party of the second part further agrees that he shall not be entitled to demand or receive payment for any portion of the aforesaid work except in the manner set forth in this agreement; and when each and all of the stipulations hereinbefore mentioned are complied with, and the Engineer shall have given his certificate to that effect a final settlement shall be made in writing between the parties, and the whole amount found due the party of the second part under this contract shall be paid to him, excepting such sum or sums as may be retained under any provision of this contract: Provided, That partial payments may be made, under direction of said party of the first part, otherwise than upon the estimates of the said Engineer as provided above, if, in the opinion of the said party of the first part, the vigorous prosecution of the work will be promoted thereby.

Ninth. It is further agreed that if at any time during the period of — from the completion of the work to be done under this contract, any part or parts thereof shall become defective from imperfect or improper material or construction, and in the opinion of the said party of the first part require repair, the said party of the second part, will, on being notified thereof, immediately commence and complete the same to the satisfaction of the party of the first part, and in case of a failure or neglect of the said party of the second part so to do, the same shall be done under the directions and orders of the party of the first part at the cost and expense of the party of the second part.

Tenth. It is further agreed that the said party of the second part

shall receive the following prices as full compensation for furnishing all the materials and labor which may be required in the prosecution of the whole of the work to be done under this agreement, and in all respects completing the same, to wit: Grading, thirty (30) cents per cubic yard, which shall include the first two hundred (200) feet of hauling, and for every additional two hundred (200) feet of hauling, one (1) cent per cubic yard. Which said sums or prices the said party of the first part shall pay to the said party of the second part as herein provided.

11 Eleventh. It is further agreed that the measurement shall be made by the Engineer of the said party of the first part, or his assistant.

Twelfth. And the said party constituting and composing the Board of Public Works in and for the District of Columbia aforesaid, agree with the said party of the second part to perform all the stipulations of this contract obligatory in it, and to pay or cause to be paid to the said party of the second part, or to his heirs, executors, or administrators, in lawful money of the United States, the amount which may be found from time to time due him according to the contract.

Thirteenth. It is further agreed that this contract shall be subject to any and all provisions of an Act entitled, "An Act to provide a government for the District of Columbia," approved February 21, 1871. So far as the same shall or may be in any respect applicable to the said contract, and also to any law of the District of Columbia pertinent thereto or any part thereof as fully as if the same were particularly set forth herein.

In witness whereof the parties to these presents have hereunto set their hands and seals the day and year first above written.

H. D. COOK. [L. S.]
ALEX. R. SHEPHERD. [L. S.]
JAMES A. MAGRUDER. [L. S.]
A. B. MULLETT. [L. S.]

BOARD OF PUBLIC WORKS,
DISTRICT OF COLUMBIA,
PETER McNAMARA,
*Contractors.*

Signed and sealed in presence of
WM. C. NOTT.
JOHN A. HURLEY.

EXHIBIT "B."

*Extension of Contract No.* 415.

It is hereby agreed by and between the Commissioners of the District of Columbia and Peter McNamara that Contract No. 415 in the series of contracts made by the Board of Public Works of the

District of Columbia shall be extended, with its various terms, conditions, and stipulations (except as respects the time of execution) to embrace an amount of grading upon Eighth, Ninth, and Tenth streets, east, between Maryland avenue and C street, north, or as much and upon so many of these streets as may be necessary to
make an amount of grading equivalent to that relinquished
12 on C and D streets, north-east, on account of change of grade.
And the Engineer of the District of Columbia shall determine what amount of grading will be an equivalent amount of work as contemplated by this agreement.

It is further agreed that the said Peter McNamara shall receive the prices stipulated to be paid in said Contract No. 415, provided that he shall accept and receive at the par value thereof, payment in the bonds issued by the Sinking Fund Commissioners of the District of Columbia, under and by virtue of Section 7 of the Act of Congress approved June 20th, 1874.

Also the said Peter McNamara shall reset the curbs, and relay the brick foot-pavements on the line of work described herein at the prices paid by the Board of Public Works for similar work; payment to be made in the hereinbefore mentioned bonds at their par value.

In witness whereof the said District of Columbia has caused this instrument to be signed by the Commissioners of said District appointed under the Act of Congress entitled, "An Act for the government of the District of Columbia, and for other purposes," approved June 20th, 1874. And the common seal of said District to be hereto affixed, and the party of the second part to these presents has hereunto set his hand and seal this third day of April, 1875.

W. DENNISON, [L. S.]
J. W. KETCHUM, [L. S.]
S. L. PHELPS, [L. S.]
*Commissioners of the Dist. of Col.*

PETER McNAMARA. [SEAL.]

Signed and sealed in the presence of

WM. A. BROWN.
GEO. F. HOWARD.

EXHIBIT "C."

The District of Columbia to Peter McNamara, Dr.

| To | | |
|---|---|---|
| 787.20 | Square yards new brick pavement laid at 100.. | $787.20 |
| 354.93 | Square yards new cobble stone pavement laid at 70..... | 248.45 |
| 615.40 | Running feet 5 in. blue stone curb and setting, at 120..... | 738.48 |
| 14.1 | Running feet granite circular curb and setting, at 205..... | 28.90 |
| 1017.48 | Cubic yards grading, at 30..... | 305.24 |
| 1017.48 | Cubic yards haul 1963 feet over 200 feet at 2454 | 249.69 |
| 289.33 | Square feet flag walk, at 60c. per foot..... | 173.59 |
| | | $2,531.55 |

28.

No. 413, Vol. A, 1876.

E. O., D. C.,

13 WASHINGTON, D. C., Dec. 14th, 1876.

To the Honorable The Commissioners of the D. C.

GENTS: In compliance with your instructions contained in your endorsement of September 18th, 1876, upon letter of Auditor of D. C., dated September 1, 1876 (6025 E. O., 1876), I transmit herewith final measurement of work done on D street, between 10th and 12th street-, N. E., by Peter McNamara, under contract No. 415, of the late Board of Public Works, amounting to $2,531.55.

Very respectfully,

R. L. HOXIE,
*Lieut. Engineer U. S. A. and Engineer of D. C.*

Respectfully referred to the Auditor of D. C.
By Order,

WM. TINDALL, *Sec'y.*

Dec. 16, 1876.

EXHIBIT "D."

The District of Columbia to Peter McNamara, Dr.

| To | | |
|---|---|---|
| 189.33 | Square yards new brick pavement laid at 100.. | $189.33 |
| 225.33 | Square yards old brick pavement laid at 25.... | 58.83 |
| 183.10 | Square yards new cobble stone laid at 70..... | 128.17 |
| 180.67 | Square feet flagging for crossing laid at 60.... | 108.40 |
| 278.60 | Running feet 5 in. new blue stone curb and setting at 120..... | 334.32 |
| 191.30 | Running feet 5 in. blue stone curb re-set at 25.. | 47.82 |
| 302 | Running feet 4 in. blue stone curb re-set at 15.. | 45.30 |
| 9.4 | Running feet — granite circular curb and setting at 205..... | 19.27 |
| 193.60 | Running feet 12 in. new gutter flag laid at 35.. | 67.76 |
| 1200 | Cubic yards grading at 30..... | 360.00 |
| 1200 | Cubic yards haul 1490 feet over 200, at 18.62.. | 233.44 |
| 493.30 | Lineal feet curb re-dressed and jointed at 20... | 98.65 |
| | | $1,681.29 |

This is in addition to former measurements, signed B. O.

Approved Oct. 18, 1876.
B. OESTLY, *Ass't Engineer.*

Approved subject to future inspection of work, Dec. 14, 1876.
R. L. HOXIE, *Engineer.*

*Letter of Transmittal.*

E. O., D. C., WASHINGTON, D. C., Dec. 14th, 1876.

To the Honorables, the Commissioners of D. C.

GENTS: In compliance with your instructions contained in your endorsement of September 13th, 1876, upon letter of Auditor of D. C., dated September 1, 1876 (6025, E. O., 1876), I transmit herewith final measurement of work done on 9th street, N. E., between 6th and Maryland avenue, by Peter McNamara, under contract No. 415, of late Board of Public Works, amounting to $1,681.29.

Very respectfully,

R. L. HOXIE,
*Lieut. Engineer U. S. A. and Engineer D. C.*

Respectfully referred to Auditor.
By order,
WM. TINDALL, *Secretary.*
Dec. 16, 1876.

14

## EXHIBIT "E."

ENGINEER'S OFFICE, DISTRICT OF COLUMBIA,
WASHINGTON, Nov. 6th, 1875.

Peter McNamara, Esq., City.

SIR: You are authorized to move out the curb and relay the foot walk on the west side of 7th street, from East Capitol to South A streets, as extra work under your contract No. 415 with the late Board of Public Works, provided the work is done at Board rates, and you accept 3.65 bonds at par in payment therefor.

By order of the Commissioners of D. C.,

(Signed) R. L. HOXIE,
*Lieut. Engineer U. S. A. and Engineer of D. C.*

## EXHIBIT "F."

The District of Columbia to Peter McNamara, Dr.

| To | | |
|---|---|---|
| 756.31 | Square yards new brick pavement laid at 100.. | $756.31 |
| 190.70 | Square yards new cobble stone pavement laid at 70..... | 133.49 |
| 572 | Running feet 5 in. blue stone reset at 25..... | 143.50 |
| 286 | Running feet 11 in. gutter flag laid at 35..... | 100.10 |
| 286 | Running feet 16 in. new gutter flag laid at 48.. | 137.28 |
| 1072 | Cubic yards grading at 40..... | 428.80 |
| 1072 | Cubic yards haul 4700 feet over 200 feet, 5875.. | 629.80 |
| 772.20 | Square yards of grading at 15..... | 115.83 |
| | | $2,444.61 |
| | Deduct for 100 loads of said and gravel obtained from streets ..... | 8.00 |
| | Total measurement ..... | $2,436.61 |
| | Deduct property..... | 176.46 |
| | | $2,260.15 |
| | Retain ..... | 37.81 |
| | | $2,222.34 |

Approved January 22d, 1876.

B. OESTLEY,
*For Lt. Eng's U. S. A. and Eng. for D. C.*

EXHIBIT "G."

WASHINGTON, Nov. 5th, 1874.

This is to certify that for and in consideration of Theodore Sheckels having this day advanced me five hundred dollars for which he holds my promissory note dated Nov. 5th, 1874, with ten per cent. per annum interest, and payable ninety days after date; and in consideration of other and further advances that may be made to me by the said Sheckels; and as I am desirous to secure to the said Sheckels the payment of such note and interest, and all other advances he may make to me, I have this day transferred and assigned, sold and set over unto the said Sheckels, all my
15 right, title and interest in and to any claim that I now have or that I may hereafter have against the District of Columbia, and all interest that I may have in any and all bonds, certificates, or other form of indebtedness that may be issued by the District of Columbia, or in any money that may become due and payable to me under Contract No. 415, for the grading of C and D streets, north, between Fourth and Fifteenth streets, east, for work done or that may hereafter be done by me for the purpose of paying the said Sheckels the above named note, as also any and all monies that he, the said Sheckels, may advance to me from time to time as the work progresses up to the completion of said streets, as will appear by notes, due bills, or other evidences of indebtedness due to said Sheckels by me when the said streets shall be completed; and for value received I hereby irrevocably constitute and appoint Theodore Sheckels, of the city of Washington, and District of Columbia, my true and lawful attorney for me, and in my name and in my behalf to ask, demand, and receive of and from the District of Columbia or the proper officers thereof all such sum or sums of money, certificates, or evidences of debts whatsoever, which are now due or may hereafter become due and owing to me by the District of Columbia under my contract for the grading of C and D streets, north, between Fourth and Fifteenth streets, east, and to have use and take all lawful ways and means in my name or otherwise for the recovery thereof and acquittances or other sufficiene discharge for the same for me and in my name to make, seal and deliver, and to do all other lawful acts and things whatsoever concerning the premises as fully in every respect as I myself might or could do were I personally present at the doing thereof, and attorneys, one or more, under him for the purpose aforesaid to make and again at his pleasure, to revoke, ratifying and confirming, and by these presents allowing whatsoever my said attorney shall in my name lawfully do or cause to be done in and about the premises by virtue of these presents.

(Signed) PETER McNAMARA.

DISTRICT OF COLUMBIA,
*County of Washington, ss:*

Personally appeared before me Peter McNamara and acknowledged the above power of attorney to be his act and deed.

Witness my hand and notarial seal this 5th day of November, 1874.

(Signed) JAS. A. TAIT,
*Notary Public.*

16 EXHIBIT "H."

Know all men by these presents that I, Peter McNamara, of the city and county of Washington, and District of Columbia, for, and in consideration of, a certain interest in the extension of Contract Number Seventeen Hundred and Sixteen, entered into on the — by and between the Commissioners of the District of Columbia appointed under the Act of Congress entitled, "An Act for the government of the District of Columbia, and for other purposes," approved June 20th, 1874, and myself, to grade, reset the old curb, and to furnish new curb, and set the same where necessary, lay brick footwalks, to lower water mains, to put in water services, and McAdamize the carriageway of 6th street, east, between Pennsylvania avenue and K street, south-east. I do hereby authorize, empower, and appoint Theodore Sheckels, of the City, County, and District aforesaid, my true and lawful attorney for me, and in my name to collect and receipt for all money, certificates or bonds that may become due me for work done under the extension aforesaid from the Commissioners of the District of Columbia, or from the Board of Audit appointed under the Act aforesaid, and this power not to be revoked, except by mutual consent, until the final completion of the work aforesaid, and to do all lawful acts appertaining thereto.

Witness my hand and seal this — day of October, A. D. 1875.

(Signed) PETER McNAMARA. [SEAL.]

Witness:
(Signed) A. G. STONE.

CITY AND COUNTY OF WASHINGTON,
*District of Columbia, ss:*

On this sixteenth day of October, A. D. 1875, before me, the subscriber, a Notary Public in and for the City, County, and District aforesaid, personally appeared Peter McNamara, well known to me to be the party who acknowledged the foregoing Power of Attorney to be his act and deed, and desired that the same might be recorded as such according to law.

Witness my hand and seal the day and year above written.

(Signed) A. G. STONE,
[NOTARIAL SEAL.] *Notary Public.*

17 EXHIBIT "I."

Know all men by these presents, that I, Peter McNamara, of the city and county of Washington, and District of Columbia, for, and in consideration of, a certain interest in the extension of Contract Number Seven Hundred and Sixteen, entered into on the — by and between the Commissioners of the District of Columbia appointed under the Act of Congress entitled, "An Act for the government of the District of Columbia, and for other purposes," approved June 20th, 1874, and myself, to grade, reset the old curb, and to furnish new curb, and set the same where necessary, lay brick foot-walks, &c., and the further orders to McAdamize the carriageway of 6th street, east, between Pennsylvania avenue and K street, southeast. I do hereby authorize, empower, and appoint Theodore Sheckels, of the City, County, and District aforesaid, my true and lawful attorney for me, and in my name to collect and receipt for all monies, certificates or bonds that may become due me for all work done under the extension aforesaid from the Commissioners of the District of Columbia, or from the Board of Audit appointed under the Act aforesaid, and this power not to be revoked, except by mutual consent, until the final completion of the work aforesaid, and to do all lawful acts appertaining thereto.

Witness my hand and seal this 22d day of December, A. D. 1875.

(Signed) PETER McNAMARA. [SEAL.]

Witness:

(Signed) A. G. STONE.

Sworn and subscribed to before me this 22d day of December, A. D. 1875.

(Signed) A. G. STONE,
*Notary Public.*

EXHIBIT "K."

Know all men by these presents, that I, Peter McMamara, of the city and county of Washington and District of Columbia for, and in consideration of a certain interest in the extension of contract number four hundred and fifteen entered into on the twenty-second day of October, 1875, by and between the Commissioners of the District of Columbia, appointed under the Act of Congress entitled "An Act for the government of the District of Columbia and for other purposes," approved June 20th, 1874, and myself, to grade, gravel, pave, and curb the footwalks and carriageway of A street, between 3d and 9th streets, S. E. I do hereby authorize, empower
18 and appoint Theodore Sheckels, of the city, county, and district aforesaid, my true and lawful attorney for me, and in my name, to collect and receipt for me all money, certificates, or bonds that may become due me for the work done under the exten-

sion aforesaid, from the Commissioners of the District of Columbia or from the Board of Audit appointed under the Act aforesaid, and this power not to be revoked, except by mutual consent, until the final completion of the work aforesaid, and to do all lawful acts appertaining thereto.

Witness my hand and seal this 22d day of December, A. D. 1875.

(Signed) PETER McNAMARA. [SEAL.]

Witness:
A. G. STONE.

Sworn and subscribed to before me this 22d day of December, A. D. 1875.

(Signed) A. G. STONE, [NOTARIAL SEAL.]
*Notary Public.*

EXHIBIT "L."

Know all men by these presents, that I, Peter McNamara, of the city and county of Washington and District of Columbia, for and in consideration of a certain interest in the extension of contract (No. 415) number four hundred and fifteen, entered into on the — by and between the Commissioners of the District of Columbia, appointed under the Act of Congress entitled "An Act for the government of the District of Columbia and for other purposes," approved June 20th, 1874, and myself, for grading, paving, setting curb, &c. I do hereby authorize, empower and appoint Theodore Sheckels, of the city, county and district aforesaid, my true and lawful attorney, for me and in my name, to collect and receipt for moneys, certificates, or bonds that may become due for work done under contract number four hundred and fifteen (415), or any extension thereto, from the Commissioners of the District of Columbia, or from the Board of Audit appointed under the Act aforesaid, and this power not to be revoked, except by mutual consent, until the final completion of the work aforesaid, and to do all lawful acts appertaining thereto.

Witness my hand and seal this 10th day of January, A. D. 1876.

(Signed) PETER McNAMARA. [SEAL.]

Witnesses:
A. G. STONE.
A. KELSEY.

Acknowledged and subscribed to before me this 10th day of January, A. D. 1876.

(Signed) A. G. STONE, [NOTARIAL SEAL.]
*Notary Public.*

19 II. *History of Proceedings Relative to Previous Appeal.*

On June 22, 1896, the Court filed findings of fact and conclusions of law and entered judgment in favor of claimant in the sum of $7,306.25, with an opinion by Richardson, Ch. J.

On September 4, 1896, the application of the defendants for an appeal to the Supreme Court was allowed.

On September 11, 1896, the record on appeal was delivered to the defendants.

On March 2, 1897, the Mandate of the Supreme Court was filed reversing the judgment of the Court of Claims, and further ordering that "this cause be, and the same is hereby, remanded to the said Court of Claims for further proceedings not inconsistent with the opinion of this Court."

III. *History of Further Proceedings.*

On February 6, 1914, on motion made and allowed, John Raum was substituted as attorney of record.

On April 20, 1914 the claimant filed a motion for judgment under the mandate of the Supreme Court filed herein March 2, 1897.

On December 8, 1914, the case came on to be heard. Mr. John Raum was heard for the claimant; Mr. P. M. Cox was heard for the defendants; Mr. V. B. Edwards was heard in reply and the case was submitted.

On Jan. 4, 1915, the Court filed an order remanding the case to the Trial Calendar.

On Jan. 11, 1915, the claimant filed a motion to vacate order of Jan. 4, 1915, which was overruled by the Court on February 3, 1915.

On December 8, 1915, the case came on to be heard. Mr. John Raum was heard for the claimant; Mr. P. M. Cox was heard in opposition and the case was submitted.

20 On January 10, 1916 the Court filed findings of fact and conclusion of law and entered judgment for claimant in the sum of $7,306.25.

On January 15, 1916, the defendants filed a motion to amend conclusion of law.

On January 18, 1916, the claimant filed a motion to amend the findings of fact and conclusion of law.

On January 24, 1916, the motions of defendants and claimant were ordered to the Law Calendar.

On February 1, 1916, the motions were submitted to the Court.

On February 7, 1916, the Court filed an order remanding the motions to the Law Calendar for oral argument.

IV. *Argument and Submission of Claimant'- and Defendant's Motions.*

On February 14, 1916, the motion of the claimant to amend the findings of fact and conclusion of law, and the defendant's motion to amend the conclusion of law came on to be heard. Mr. John Raum was heard for the claimant; Mr. P. M. Cox was heard for the defendants and the motions were submitted.

V. *Order of Court on Above Motions. Filed Feb.* 21, 1916.

Allowed in part and overruled in part. Former findings and conclusion of law vacated and set aside and amended findings and conclusion of law in the sum of $7,306.25 this day filed.

21 VI. *Findings of Fact and Conclusion of Law. Filed Feb.* 21, 1916.

Court of Claims of the United States.

No. 292, D. C.

HELEN C. SHECKELS, Surviving Executrix of Theodore Sheckels, Deceased,

vs.

THE DISTRICT OF COLUMBIA.

This case having been heard by the Court of Claims, the court upon the evidence makes the following

*Findings of Fact.*

I.

This case was originally heard by the Court together with the claims of Peter McNamara, numbered 251 and 252 D. C., and decided June 22, 1896, 31 C. Cls., 395. The Court now adopts as its findings II, III, IV herein, Findings I, II, and III, as then found.

II.

Peter McNamara had several contracts with the defendant through the late corporation of Washington, the late Board of Public Works, and the Commissioners of the District of Columbia, by extensions thereof, for work and materials, being a certain contract with the corporation of Washington and contracts with the Board of Public Works numbered 415 and extensions thereof, 515, 716 and extensions thereof, and 850.

III.

These actions, originally brought under the Act of June 16, 1880, 21 Stats. L., 284, on said contracts were consolidated and tried together before a referee, who, after stating the accounts, found and reported, June 8, 1891, as due from defendant under said contracts for work, at contract rates, as follows:

22 "I find due the claimants under the several contracts mentioned in cases 251 and 292 the following sums, viz:

| | |
|---|---|
| "I. Under old corporation contract | $5,119.36 |
| II. Under contract No. 515 | 1,065.06 |
| III. Under contract No. 850 | 1.00 |
| IV. Under contract No. 716 and extensions | 1,189.31 |
| V. Under contract No. 415 and extensions | 7,044.04 |
| Total | $14,418.77 |

"I further report that the sum of $5,119.36 of the above amount was due and payable as of February 1, 1872, and that the remaining portion, $9,299.41 was due and payable as of April 1, 1876.

"The amount assigned to S. J. Ritchie, $927.10, is included in the amount found to be due under contract No. 716 and extensions.

"The amount claimed by Theodore Sheckels is included in amount found to be due under contracts 415, 716 and extensions.

"In conclusion, I find that in the whole the defendant is entitled to recover of claimant, McNamara, the sum of $6,694.41, with interest from June 1, 1874."

IV.

The referee found that said McNamara had made an assignment to said Theodore Sheckels, deceased, of $7,306.25 of said amounts due from defendant, and an assignment to Samuel J. Ritchie (not a claimant in these cases) of $927.10 of said amounts due from the defendant, leaving a balance due to the estate of said McNamara of $6,183.42.

V.

Said referee also found that the defendants were entitled to recover from said McNamara on their counterclaim the sum of $21,123.18, which amount was due to the defendants as of June 1, 1874, from which should be deducted the $14,418.77 due to Mc-
23 Namara, leaving $6,704.41 as the net amount defendant was entitled to recover on its counterclaim, which arose under contract numbered 248, dated April 26, 1872, which contract was not assigned to Sheckels.

VI.

The referee reported that said McNamara had assigned to S. J. Ritchie $927.10 under contract No. 716, and that the amount claimed

by Theodore Sheckels, the claimant herein, of $7,306.25, was included in the sum found to be due under contracts 415 and 716 and extensions thereof, and that both of these amounts were part of said sum of $14,418.77.

VII.

Claimant excepted to the report of the referee as to the finding for defendant on its counterclaim, and the court decided that under the act of February 13, 1895 claimant's exception was well taken and must be sustained and that the findings of the referee in relation to the counterclaim as to both principal and interest must be overruled. The court otherwise adopted the referee's report as the findings of the court and rendered judgment in favor of McNamara for $5,119.36 with interest from February 1, 1872 and for $1,066.06 with interest from April 1, 1876, and a judgment in favor of the executrices of Sheckels for $7,306.25 with interest from April 1, 1876.

The Supreme Court reversed the decision of the Court of Claims and remanded the cases for further proceedings on February 15, 1897.

Before any action was taken under the decision of the Supreme Court the Act of February 15, 1895, was repealed by the Act of March 3, 1897 (29 Stats. L., 669).

VIII.

24 The case of McNamara, No. 251, was submitted to this court on claimant's revised exceptions to the referee's report and on November 17, 1913, the court rendered judgment against McNamara's estate in favor of the defendant for $6,704.41 with interest thereon at six per cent per annum from June 22, 1896, said sum being the difference between the counterclaim of $21,123.18 and the amount found due McNamara by the referee, $14,418.77.

IX.

Exhibit "G" to claimant's petition purports to be an assignment and power of attorney from McNamara to claimant, and reads as follows:

"WASHINGTON, Nov. 5th, 1874.

This is to certify that for and in consideration of Theodore Sheckels having this day advanced me $500 for which he holds my promissory note dated Nov. 5th, 1874, with 10% per annum interest, and payable 90 days after date; and in consideration of other and further advances that may be made to me by the said Sheckels; and as I am desirous to secure to said Sheckels the payment of such note and interest, and all other advances he may make to me, I have this day transferred and assigned, sold and set over unto the said Sheckels all my right, title and interest in and to any claim that I now have or that — may hereafter have against the District of Columbia, and all interest that I may have in any and all bonds, certificates, or other form of indebtedness that may be issued by the

District of Columbia, or in any money that may become due and payable to me under contract No. 415, for the grading of C and D Streets, north, between Fourth and Fifteenth streets, east, for work done or that may hereafter be done by me for the purpose of paying the said Sheckels the above named note, as also any and all monies that he, the said Sheckels, may advance to me from time to time as the work progresses up to the completion of said streets, as will appear by notes, due bills, or other evidences of indebtedness due to said Sheckels by me when the said streets shall be completed; and for value received I hereby irrevocably constitute and appoint Theodore Sheckels, of this city of Washington, and District of Columbia, my true and lawful attorney for me, and in my name and in my behalf to ask, demand, and receive of and from the District of Columbia or the proper officers thereof all such sum or sums of money, certificates, or evidences of debts whatsoever, which are now due or may hereafter become due and owing to me by the District of Columbia under my contract for the grading of C and D streets, north, between Fourth and Fifteenth streets, east, and to have, use and take all lawful ways and means in my name or otherwise for the recovery thereof and acquaintances or other sufficient discharge for the same for me and in my name to make, seal, and deliver, and to do all other lawful acts and things whatsoever concerning the premises as fully in every respect as I myself might or could do were I personally present at the doing thereof, and attorneys, one or more, under him for the purpose aforesaid to make and again at his pleasure, to revoke, ratifying and confirming, and by these presents allowing whatsoever my said attorney shall in my name lawfully do or cause to be done in and about the premises by virtue of these presents.

PETER McNAMARA."

Exhibit "H" to said petition purports to be a power of attorney from McNamara to claimant and reads as follows:

"Now all men by these presents that I, Peter McNamara, of the city and county of Washington, and District of Columbia, for, and in consideration of a certain interest in the extension of Contract Number Seven hundred and Sixteen, entered into on the — by and between the Commissioners of the District of Columbia appointed under the Act of Congress entitled 'An Act for the government of the District of Columbia, and for other purposes,' approved June 20th, 1874, and myself, to grade, reset the old curb, and to furnish new curb, and set the same where necessary, lay brick-walks, to lower water mains, to put in water services, and McAdamize the carriageway of 6th street, east, between Pennsylvania avenue and K Street, south-east, I do hereby authorize, empower, and appoint Theodore Sheckels, of the City, County and District aforesaid, my true and lawful attorney for me, and in my name to collect and receipt for all money, certificates or bonds that may become due me for work done under the extension aforesaid from the Commissioners of the District of Columbia, or from the Board of Audit appointed under the act aforesaid, and this power not to be revoked, except by

mutual consent, until the final completion of the work aforesaid, and to do all lawful acts appertaining thereto.

Witness my hand and seal this — day of October, A. D. 1875.

PETER McNAMARA."

Exhibit "I" is a similar power of attorney dated December 22, 1875, covering extension of Contract No. 716, and Exhibit "K," dated December 22, 1875, and Exhibit "L" dated January 10, 1876, are similar powers of attorney covering extension of Contract No. 415.

X.

The originals of said assignment and powers of attorney have not been produced, nor can any such documents be found among the records of the District of Columbia.

At the taking of Sheckels' testimony on December 23, 1882, the attorney for the District of Columbia, upon notice from claimant's attorney, produced the original assignment and powers of attorney, of which Exhibits G, H, I, K and L are copies, and Sheckels
26 identified them and proved their genuineness.

The referee reported that no acceptance of the assignment by the District has been established.

It appears that said Sheckels receipted for certain certificates of indebtedness under said contracts and extensions as "Attorney for Peter McNamara."

XI.

The debt due to claimant from McNamara is made up as follows:

| | |
|---|---|
| (1) A judgment against McNamara paid by Sheckels.. with interest at 6 per cent per annum. | $255.79 |
| (2) A due bill dated February 26, 1876, signed by McNamara ..... with interest at 10 per cent per annum. | 776.00 |
| (3) A promissory note dated November 22, 1875, for... with interest at 10 per cent per annum. | 2,391.75 |
| (4) A promissory note dated December 17, 1874, for... with interest at 8 per cent per annum. | 400.00 |
| (5) A due bill dated March 13, 1876, signed by McNamara ..... with interest at 10 per cent per annum. | 60.00 |
| Total ..... | $3,883.54 |

which amount with interest computed to June 22, 1896, amounts to more than the sum claimed.

*Conclusion of Law.*

Upon the foregoing findings of fact the court decides, as a conclusion of law, that the plaintiff's motion for judgment be and the

same is hereby allowed, and judgment is awarded plaintiff in the sum of seven thousand, three hundred and six dollars and twenty-five cents ($7,306.25).

Said amounts were due and payable April 1, 1876, but said judgment to bear interest only from the date of its rendition, and is payable as provided by section 6 of the act of June 16, 1880 (21 Stat. L., p. 284), as amended by the act of March 3, 1881 (21 Stat. L., p. 466).

It is so ordered.

27 VII. *Judgment of the Court.*

At a Court of Claims held in the City of Washington on the 21st day of February 1916, judgment was ordered to be entered as follows:

The Court, upon due consideration of the premises find in favor of the claimant, and do order, adjudge and decree that the said Helen C. Sheckels, surviving executrix of Theodore Sheckels, deceased, do have and recover of and from the District of Columbia in the manner provided by the Act of June 16, 1880, Chapter 243, Seven thousand three hundred and six dollars and twenty-five cents ($7,306.25).

Said amounts were due and payable April 1, 1876, but said judgment shall bear interest only from the date of its rendition, and is payable as provided by section 6 of the Act of June 16, 1880 (21 Stat. L., p. 284), as amended by the Act of March 3, 1881 (21 Stat. L., p. 466).

By the COURT.

VIII. *Application for, and Allowance of, Appeal.*

Comes now the claimant, by John Raum, her attorney, and moves the court for an order allowing her to appeal to the Supreme Court of the United States from the judgment rendered in the above entitled cause at this term of court.

JOHN BAUM,
*Attorney for Claimant.*

Filed March 1, 1916.

Ordered that the above appeal be allowed as prayed for.
March 13, 1916.

By the COURT.

28 Court of Claims, District of Columbia.

No. 292.

HELEN C. SHECKELS, Surviving Executrix of Theodore Sheckels, Deceased,
vs.
THE DISTRICT OF COLUMBIA.

I, Samuel A. Putman, Chief Clerk Court of Claims, certify that the foregoing are true transcripts of the pleadings in the above-entitled cause; of the history of proceedings relative to previous appeal; of the history of further proceedings; of the argument and submission of case; of the findings of fact and conclusion of law; of the judgment of the Court; of the application of the claimant for, and the allowance of, appeal to the Supreme Court of the United States.

In testimony whereof I have hereunto set my hand and affixed the seal of a said Court of Claims at Washington City this 15th day of March, A. D., 1916.

[Seal Court of Claims.]

SAMUEL A. PUTMAN,
*Chief Clerk Court of Claims.*

Endorsed on cover: File No. 25,233. Court of Claims. Term No. 950. Helen C. Scheckels, surviving Executrix of Theodore Sheckels, deceased, appellant, vs. The District of Columbia. Filed April 10th, 1916. File No. 25,233.

2



25,233

IN THE

# Supreme Court of the United States

OCTOBER TERM, 1915.

No. 4[redacted]144

HELEN C. SHECKELS, SURVIVING EXECUTRIX OF THEODORE SHECKELS, DECEASED, APPELLANT,

vs.

THE DISTRICT OF COLUMBIA.

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APPEAL FROM THE COURT OF CLAIMS.

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## Brief of Argument for Appellant.

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JOHN RAUM,
*Attorney for Appellant.*

V. B. EDWARDS,
*Of Counsel.*

THE LAW REPORTER PRINTING COMPANY, 518 FIFTH ST. N. W., WASHINGTON, D. C.

# INDEX.

IN THE

# Supreme Court of the United States

OCTOBER TERM, 1915.

No. 950.

HELEN C. SHECKELS, SURVIVING EXECUTRIX OF THEODORE SHECKELS, DECEASED, APPELLANT,

*vs.*

THE DISTRICT OF COLUMBIA.

APPEAL FROM THE COURT OF CLAIMS.

## Statement.

This is an appeal from a decision of the Court of Claims in a suit filed by Theodore Sheckels, December 15, 1880, under the act of June 16, 1880, to provide for the settlement of all outstanding claims against the District of Columbia, and conferring jurisdiction on the Court of Claims to hear the same, and for other purposes (21 Stat., 284).

Theodore Sheckels brought said suit as the assignee of contract 415, dated July 24, 1872, and its extensions, and contract 716, dated June 10, 1873, and its extensions (Rec., pp. 15, 161, 17, 18).

Said contracts and their extensions were duly made between Peter McNamara and the District of Columbia (Rec., pp. 7, 8, 9, 10, 11, 12, 13, 14, 20).

The assignments of said contracts were for valuable considerations, irrevocable and were intended to secure

Sheckels for money advanced and to be advanced by him to McNamara (Rec., pp. 15, 16, 17, 18, 24).

This suit, No. 292, D. C., was, by an order of court, consolidated with two suits, Nos. 251 and 252, D. C., filed by Peter McNamara, and said suits were referred to a referee (Rec., p. 21), who, after stating the accounts, found and reported June 8, 1891, as due from appellee under the contract sued on for work, at contract rates as follows:

| | |
|---|---|
| 1. Under contracts not assigned | $6,185.42 |
| 2. Under contract 716 and extensions | 1,189.31 |
| 3. Under contract 415 and extensions | 7,044.04 |
| Total | $14,418.77 |

Of the amount due under contract 716 and extensions, the referee found that $927.10 had been assigned by McNamara to one S. J. Ritchie, leaving a balance of $262.21, which added to the $7,044.04 due under contract 415 and extensions, made the sum of $7,306.25, which was subject to the assignment of Sheckels (Rec., p. 21).

Appellee's defense was a counterclaim of $21,123.18 for overpayments made by it to McNamara for work done under contract 248, dated April 26, 1872, which was not assigned to Sheckels (Rec., p. 21). The payments for the work under contract 248 were made at rates fixed by the Board of Public Works of the District, which were higher than the rates fixed by said contract. The difference between the contract rates and the board rates constituted the counterclaim. Such board rate payments were made to numerous contractors and were considered legal by the authorities of the District and the contractors until the question was raised and determined by the court in suits under the act of June 16, 1880 (Barnard *vs.* D. C., 127 U. S., 409).

The referee found that appellee was entitled to judg-

ment for $21,123.18 less $14,418.77, the amount found by him to be due the contractor at contract rates (Rec., p. 21).

Appellant duly excepted to the report of the referee (Rec., p. 21).

By the act of February 13, 1895 (28 Stat., 664), Congress directed the Court of Claims in suits under the act of June 16, 1880, to allow contractors board rates. This act deprived the appellee of the defense set out in its counterclaim.

This suit and McNamara's suit, No. 251, were then tried and on June 22, 1896, the Court of Claims rendered judgment in favor of McNamara's administrator for $5,119.36 due and payable February 1, 1872, and for $1,066.06 due and payable April 1, 1876, and a judgment in favor of the executrices of Theodore Sheckels for $7,306.25 due and payable April 1, 1876 (31 C. Clms., 395, Rec., p. 22).

From said judgments appellee appealed and said appeals are Nos. 617 and 618 of the October Term, 1896, of this court. The rights of Sheckels and McNamara on said appeals were treated as identical and the only question raised and decided related to the date from which interest on the claims should begin to run under the act of February 13, 1895. This court held that the act of February 13, 1895, conferred a donation on contractors and that claims against the District under said act should carry interest from the date of the act only (165 U. S., 330).

On April 20, 1914, Helen C Sheckels, surviving executrix, filed motion for judgment under the mandate of the Supreme Court filed in the cause March 2, 1897 (Rec., p. 19).

Finally, on February 21, 1916, after various hearings and motions, the court filed its findings of facts and conclusion of law and entered judgment for appellant

against appellee for $7,306.25, and adjudging as follows:

> "Said amounts were due and payable April 1, 1876, but said judgment shall bear interest only from the date of its rendition, and is payable as provided by section 6 of the act of June 16, 1880 (21 Stat. L., p. 284), as amended by the act of March 3, 1881 (21 Stat. L., p. 466," Rec., p. 25).

From said judgment this appeal is brought.

## The Acts of Congress.

Below are given citations of all the acts of Congress relating to claims against the District of Columbia:

Act of June 16, 1880, 21 Stat., 284.
Act of March 3, 1881, 21 Stat., 466.
Act of March 3, 1883, 22 Stat., 469.
Act of February 13, 1895, 28 Stat., 264.
Act of March 3, 1897, 29 Stat., 669.
Act of June 6, 1900, 31 Stat., 572.
Act of March 3, 1903, 32 Stat., 1070.

The act of March 3, 1881, authorized the sale of the 3.65 District bonds in paying judgments.

The act of March 3, 1883, extended the time for filing suits under the act of June 16, 1880.

The act of February 13, 1895, directed the Court of Claims to allow contractors board rates.

The act of March 3, 1897, repealed the act of February 13, 1895.

The act of June 6, 1900, directed that no judgment against the District under the act of June 16, 1880, should be paid without a specific appropriation.

The act of March 3, 1903, repealed the above mentioned provision of the act of June 6, 1900.

**Assignment of Errors.**

1. The court erred in not confining its judgment to a determination of the amount of the claim and the day on which the claim became due and payable.

2. The court erred in assuming that it has jurisdiction under the act of June 16, 1880, to allow or deny interest on claims against the District of Columbia.

3. The court erred in allowing interest on the judgment from the date of its rendition.

4. If the court had authority to allow interest on the judgment, it erred in not fixing the rate of interest.

5. If the court had authority to allow interest on the judgment, it erred in not allowing interest thereon from April 1, 1876, the day on which the claim became due and payable.

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## ARGUMENT.

The judgment for the principal sum is correct and appellant insists on her right thereto.

The error of the trial court consists in ignoring the provisions of section 6 of the act of June 16, 1880, so far as to direct that the judgment should bear interest only from the date of its rendition.

Section 1 of said act confers on the Court of Claims legal and equitable jurisdiction to adjudicate nine classes of claims against the District of Columbia, three of said classes being as follows:

> "All claims now existing against the District of Columbia arising out of contracts, made by the late Board of Public Works, and extensions thereof made by the Commissioners of the District of Columbia."
>
> "And such claims as have arisen out of con-

tracts made by the District Commissioners since the passage of the act of June 20, 1874."

"And of all claims for work done by the order or direction of the said Commissioners and accepted by them for the use, purpose and benefit of the said District of Columbia, and prior to the fourteenth day of March, eighteen hundred and seventy-six."

Section 1 also confers on the court power as follows:

"Said Court of Claims shall have the same power, proceed in the same manner and be governed by the same rules, in respect to the mode of hearing, adjudication and determination of said claims, as it now has in relation to the adjudication of claims against the United States: Provided, Said court may make such additional rules as may be necessary to save costs and prevent delays in the prosecution of such claims."

Section 2 of the act authorizes the assignee of a contractor to sue, and confers the right of appeal on either party.

Section 5 provides that the judgments of the court under the act shall be paid by the Secretary of the Treasury in the manner provided by section 6.

Section 6 authorizes the Secretary of the Treasury to demand of the sinking fund commissioner of the District of Columbia as many of the 3.65 bonds authorized by the act of June 20, 1874, and acts amendatory thereof, as may be necessary for the payment of the judgments and said sinking fund commissioner is directed to deliver to the secretary the amount of said bonds required to satisfy the judgments; said bonds to be received at par by claimants and to bear date August 1, 1874; and before the delivery of such bonds in payment of said judgments, the interest coupons shall be detached

therefrom from the date of the bonds to the day upon which said claims became due and payable.

It is clear that the Court of Claims has no jurisdiction to allow interest on its judgments under the said act of 1880, and that its sole duty is to determine the amount of each claim and the date it became due and payable.

The Court of Claims is given the same power over District claims as it has over claims against the United States. It can not allow interest on its judgments against the United States. Hence, it can not allow interest on its judgments against the District.

In Fendall Admr. *vs.* D. C. (16 C. Clms., 106-121), the first case tried under the act of 1880, the Court of Claims, after carefully considering said act, held as follows:

> "The act of June 16, 1880, ch. 243, sec. 6, makes the judgments of the court upon claims against the District payable, not in money, but in 3.65 bonds, so called, as described and provided for in the act of 1874. These bonds bear date August 1, 1874, and have semi-annual interest coupons attached from that date. The same section of the act of 1880 further provides that before the delivery of such bonds in payment of judgments rendered as aforesaid on the claims aforesaid, the coupons shall be detached therefrom from the date of said bonds to the day upon which such claims became due and payable. This renders it necessary for the court to determine when the claims became due and payable, within the meaning of the act, to cast interest to that date, and to specify the date in the judgment, in order that the Secretary of the Treasury may know what coupons, if any, are to be detached from the bonds which he delivers in payment."

Prior to the instant case, in all the judgments (over forty) rendered by the Court of Claims against the District, the principles enunciated in the Fendall case were

followed, and the court fixed the amount of the claim and the date it became due and payable, and was silent as to the interest.

### How the Contracts Were Payable.

The original contracts 415 and 716 were payable in United States currency. Their extensions were payable in 3.65 District bonds (Rec., pp. 10, 11, 14).

Of the $7,306.25 due appellant, $6,454.99 arose under the extensions of contract 415, payable in 3.65 District bonds (Rec., pp. 12, 13, 14).

The money was not paid and the bonds not delivered. The act of 1880 was an invitation to appellant to establish her claim in the Court of Claims, and a promise to pay her claim, when and if established, in the 3.65 bonds.

### Laches and Interest.

The court's refusal to allow interest on the claim from the day it became due and payable can be justified only on the ground that the interest is allowable only by way of damages and rests in discretion and has been forfeited by laches. This is not the case. The extensions of said contracts were payable in interest bearing bonds. The act of 1880 provides that the claims shall be paid in bonds bearing interest from the day upon which they became due and payable. Said contracts and said act make the interest part of the debt. And where interest is expressly reserved in the contract or is implied by the nature of the promise, it becomes part of the debt and is recoverable as of right.

Redfield *vs.* Ystalyfera Iron Co., 110 U. S., 174.
Frazer *vs.* Bigelow Carpet Co., 141 Mass., 126.

Section 7 of the act of 1880 confers upon the District full power to enforce diligent prosecution of claims. If

this claim has been negligently prosecuted, the District is equally guilty of the laches. In D. C. *vs.* Talty (182 U. S., 510), laches was strongly urged by the District as a defense, but the court ignored the contention and affirmed the judgment.

**3.65 District Bonds Outstanding.**

On September 30, 1914, there were outstanding $6,533,000 of the 3.65 District bonds (U. S. Treasurer's Statement of D. C. Funded Debt).

If this claim had been paid at any time before this appeal, the bonds issued in payment would be outstanding. Hence, the delay in the prosecution of this claim has resulted in no loss to the District.

**Rate of Interest and Date From Which Cast.**

Appellant contends that under the act of 1880 interest is not within the discretion of the court, that said act makes the interest part of the debt, and the interest of 3.65 per annum runs from the day upon which the claim became due and payable. If, however, the interest is within the discretion of the court, such interest must necessarily be by way of damages, and the rate of interest must be according to the lex fori.

Goddard *vs.* Foster, 17 Wall., 123.

The Court of Claims is the forum and it has no law fixing the rate of interest on its judgment, unless the rate of 6 per cent, fixed by Chap. 34, District Code, is applicable. But the court did not fix the rate of interest and its judgment for interest is void for uncertainty. Who is to fix the rate of interest? If the appellant fixes the rate, will the appellee be bound by it? The court may have thought the rate of interest on its judgment was to be the same as that of the District bonds. But that can not be. The act of Congress, which authorized

the issue of the 3.65 District bonds, contains no reference to interest on judgments.

In its judgment against McNamara's estate, the court allowed the District 6 per cent interest from June 22, 1896, the date of the original judgment (Rec., p. 22). If the court has discretion in the matter of interest why should it not have allowed appellant the same rate from the same date?

Section 177, Judicial Code(Sec. 1091, R. S.), provides:

> "No interest shall be allowed on any claim up to the time of the rendition of the judgment thereon by the Court of Claims, unless upon a contract expressly stipulating for the payment of interest."

Said section is the only law relating to the allowance of interest by the Court of Claims, and it does not authorize the court to allow interest on its judgments from their date.

Section 178, Judicial Code (Sec. 1092, R. S.), provides:

> "The payment of the amount due by any judgment of the Court of Claims, and of any interest thereon allowed by law, as provided by law, shall be a full discharge to the United States of all claim and demand touching any of the matters involved in the controversy."

If a contract expressly stipulates for the payment of interest, or if the law directs the payment of interest on a claim, the payment of a judgment for the principal, without the interest, would not be a full discharge of the claim within the intendment of section 178.

If the Court of Claims has jurisdiction to allow interest on the judgment, it should fix the rate of interest and allow it from the day upon which the claim became due and payable, as directed by section 6 of the act of 1880. Said section 6 provides that claims against the District

shall bear 3.65 per cent interest from the day they become due and payable. This provision is consonant with the general principles of law.

Chicago *vs.* Tebbetts, 104 U. S., 120.
Filman *vs.* Proctor, 125 U. S., 136.
Crosby Steam Gauge Co. *vs.* Con. Safety Valve Co., 141 U. S., 441.

And the Court of Claims has no authority to ignore said provision of the act of Congress and to fix a different date from which interest is to be computed.

**The Assignments.**

The assignments to Sheckels by McNamara were of money to become due under certain contracts made by McNamara and the District.

The assignment (Exhibit G, Rec., p. 22) is a legal assignment of all money to arise under contract 415, and is valid for all purposes.

Moody *vs.* Wright, 13 Metcalf, 17.
Skipper *vs.* Stokes, 42 Ala., 255.

The assignment (Exhibit H, Rec., p. 23) is in the form of a power of attorney, irrevocable and for a valuable consideration and covers extension of contract 716. Exhibits I, K, and L (Rec., pp. 17, 18, 24) are similar instruments, covering the other contracts. Said powers of attorney were intended and treated by the parties as assignments and as security for advances made and to be made by Sheckels to McNamara to aid him in performing said contracts and are valid.

To create a valid assignment in equity of a chose in action no particular form of words is necessary. Any

words are sufficient which show an intention to assign the chose for a valuable consideration.

Thompson *vs.* Spies, 13 Sim., 469.
Cook *vs.* Black, 1 Hare, 390.
Chowe *vs.* Baylis, 31 Beav., 351.

A future expectancy is assignable.

Comgys & Pettit *vs.* Vasse, 1 Peters, 215.

An assignment of money to become due upon performance of an existing contract is valid in equity.

Hassie *vs.* The Congregation, 35 Cal., 388.
Hall *vs.* Mayor of N. Y., 2 Abb. App., 307.
Devlin *vs.* Mayor of N. Y., 63 N. Y., 15.
First Nat. Bk. *vs.* Kimberlands, 16 W. Va., 592.
Ruple *vs.* Bindley, 91 Pa. St., 299.

**The Counterclaim.**

Appellee's sole defense was a counterclaim of $21,123.18, arising from overpayments made by the District to McNamara for work done under contract 248, dated April 26, 1872. For work done under said contract McNamara was paid at rates fixed by the Board of Public Works of the District, which were greater than the rates fixed by said contract. The difference between the board rates and the contract rates constitutes the counterclaim. Said contract 248 was not assigned to Sheckels (Rec., p. 21, Finding V).

The assignments to Sheckels are not subject to said counterclaim. And no counterclaim arose from the contracts assigned.

The general rule is that the assignee of a chose in action takes it subject to all set-offs which might have been urged against it in the hands of the assignor at the time of the assignment. The set-off must be due and payable at the time of the assignment; and the chose in

action must be due and payable to the assignor before the assignment. These conditions do not exist here. The District made a payment to McNamara on contract 248 after the assignment of contract 415; and at the date of each assignment to Sheckels there was nothing then due on the contract assigned.

Leading Cases in Equity, Notes to Ryall *vs.* Rowles, Vol 2., Part 2, pp. 1595, 1596, 1597; Textbooks Series, pp. 881, 882, 883.
Waterman on Set-off (2d ed.), sec. 107.
Kull *vs.* Thompson, 38 Mich., 685.
Fuller *vs.* Steigler, 27 Ohio St., 355.
Martine *vs.* Willis, E. D. Smith (N. Y.), 139.
Duncan *vs.* Stanton, 30 Barb. (N. Y.), 533.
Myers *vs.* Davis, 22 N. Y., 489.
Martin *vs.* Kunzmuller, 37 N. Y., 396.
Breen *vs.* Seward, 11 Gray, 118.
Graham *vs.* Tilford, 1 Metc. (Ky.), 112.
22 Encyc. Law, 302.
Richards *vs.* La Tourette, 53 Hun, 623.
McIver *vs.* Wilson, 1 Cranch (C. C.), 423.
Richards *vs.* Union, 48 Hun, 263.
Bateman *vs.* Connor, 6 N. J. L., 104.

The assignee of money to arise under a contract will be entitled to it subject only to the conditions of the contract. This is an exception to the above stated general rule. The only set-off available against the assignee of a contract is a counter-demand flowing directly from the contract itself. It can not be an independent cross-demand.

Leading cases in Equity, supra, pp. 1595, 1597.
Tooth *vs.* Tallett, 4 L. R. Ch. App., 242.
Bristow *vs.* Whitmore, 9 H. L. C., 391.
Howell *vs.* Medler, 41 Mich., 641.

St. Andrew *vs.* Manchaug. Mfg. Co., 134 Mass., 42.
Abbott *vs.* Foote, 146 Mass., 333.
Tims *vs.* Shannon, 19 Md., 296.

In the cases cited below, it is held that the rights of a bona fide assignee, without notice, will be protected, and that no set-off will be permitted where it will infringe a right of equal grade, and a set-off will not be permitted to affect an equitable assignee, without notice.

Goodwin *vs.* Richardson, 44 N. H., 125.
Ramsey's Appeal, 2 Watts (Pa.), 228, s. c., 27 Am. Dec., 301.
Horton *vs.* Miller, 44 Pa. St., 256.
Pheiffer *vs.* Harris, 11 Bush (Ky.), 400.
Primm *vs.* Ransom, 10 Mo., 444.
Gallaher *vs.* Pendleton, 55 Iowa, 142.
Bell *vs.* Perry, 43 Iowa, 368.
Davis *vs.* Milburn, 3 Iowa, 163.
Wright *vs.* Cobleigh, 23 N. H., 32.
Mervine *vs.* Greble, 2 Pars. Eq. Cas. (Pa.), 271.
Duncan *vs.* Bloomstock, 2 McCord (S. C.), 318, (s. c., 13 Am. Dec., 728).
Hill *vs.* Brinkley, 10 Ind., 105.
Ledyard *vs.* Phillips, 58 Mich., 204.
McCauley *vs.* U. S., 11 C. Clms. R., 694.
Howe *vs.* Sheppard, 2 Sumner (U. S.), 411-418.

In Howe *vs.* Sheppard, supra, Justice Story said:

> "Where there are mutual debts which may be set-off in law or equity, I take it to be clear that the right of set-off is extinguished by bona fide assignment of one of the debts."

Sheckels is an equitable assignee without notice and is entitled to protection.

All the equities favor Sheckels as against the District.

The loans made by Sheckels to McNamara were to aid the latter in his District contracts. Sheckels gave the District prompt notice of the assignments. The District did not give Sheckels notice of its counterclaim. By the silence of the District, when it should have spoken, Sheckels was deceived as to the real interest of McNamara in the money to be earned under the contracts assigned. Such conduct estops the District to plead the counterclaim against Sheckels.

Leading Cases in Equity, supra, p. 1597 (Text: book Series, p. 883).

Coffin *vs.* McLean, 80 N. Y., 560.
Davidson *vs.* Alfaro, 80 N. Y., 660.
Dickerson *vs.* Colgrove, 100 U. S., 578.

In the following cases, it is held that a debt due from the assignor can not be used as a set-off against his assignee unless the latter had notice of the facts constituting the right of set-off.

Irvine *vs.* Myers, 6 Minn., 562.
Hurst *vs.* Sheets, 14 Iowa, 322.
Hovey *vs.* Morrill, 61 N. H., 9 (s. c., 60 Am. Rep., 315).
Rowe *vs.* Langley, 49 N. H., 395.

In Eslin, Admr. of Connelly et al., *vs.* D. C. (29 C. Clms., 393) the District pleaded a counterclaim for overpayments at board rates made to Connelly. The court held that while the counterclaim was available against the estate of Connelly, it could not prevail against his assignees. The District appealed, but subsequently the appeal was dismissed per stipulation by the Solicitor General.

D. C. *vs.* Eslin, Admr. of Connelly et al., 197 U. S., 625.

If said dismissal was not an affirmance of the decision of the lower court, it at least shows acquiescence therein by the Government.

### Judgment Against McNamara's Estate.

The judgment (Rec., p. 22) in favor of the District against McNamara's estate is clearly erroneous. Said judgment should have been for $14,937.76, the difference between the counterclaim of $21,123.18 and the items of $5,119.36, $1,065.06, and $1, due and payable to McNamara per Finding III (Rec., p. 21). McNamara was not entitled to credit for the $927.10, assigned to Ritchie, which the latter recovered in 1890 in his suit No. 150, D. C. (25 C. Clms., 525). Nor is McNamara entitled to credit for the $7,306.25, which he assigned to Sheckels.

Sheckels, however, was not a party to said suit and is not bound by said judgment.

### The Court's Jurisdiction.

Section 1 of the act of June 16, 1880, confers on the Court of Claims jurisdiction to adjudicate this claim. Section 6 provides for the payment of judgments under the act and limits the issue of the 3.65 District bonds, in which the judgments are payable, to $15,000,000. The U. S. Treasurer's statement of the funded debt of the District, issued September 30, 1914, shows that there remains unissued of said bonds $2,700 only, a sum insufficient to pay this judgment. This fact does not toll the court's jurisdiction. Courts are not concerned in the payment of their judgments. If the act of 1880 made no provision for the payment of the judgments under it, the court would still have jurisdiction.

**Acceptance of the Assignments.**

The court finds (Rec., p. 24) that the District did not accept the assignments to Sheckels, but that said assignments were in the possession of the District on December 22, 1882, when Sheckels took his testimony and were then produced and proven, and can not now be found. This finding shows that the District had notice of the assignments. Sheckels perfected his title when he gave such notice. Acceptance by the District was unnecessary.

Brashear *vs.* West, 7 Peters, 608.

**Defect in Record.**

The record is defective in not showing that on January 8, 1896, a motion was filed, suggesting the death of Theodore Sheckels and substituting Mary R. Sheckels, Mary M. D. Sheckels and Helen C. Sheckels, his executrices, and also in not showing that on February 4, 1914, a motion was filed, suggesting the deaths of said Mary R. Sheckels and Mary M. D. Sheckels.

It is submitted, however, that the judgment, being in favor of Helen C. Sheckels, surviving executrix of said Theodore Sheckels, cures said defect.

A party to a judgment has the right of appeal.

Payne *vs.* Niles, 20 Howard, 219.

It will be presumed that every proceeding below essential to the legality of the judgment was taken.

Reagan *vs.* Aiken, 138 U. S., 109.

**Facts Established by the Findings.**

Finding II (Rec., p. 21) shows that Peter McNamara and the appellee duly entered into contracts 415, 716 and their extensions, for work and materials.

Finding III (Rec., p. 21) shows the following facts:

(1) That under contract 716 and extensions $1,189.31

are due and payable, as of April 1, 1876, from appellee for work done at contract rates.

(2) That under contract 415 and extensions, $7,044.04 are due and payable, as of April 1, 1876, from appellee for work at contract rates.

(3) That the amount assigned to Sheckels by McNamara is included in the amounts found to be due under contracts 415, 716, and extensions.

Finding IV (Rec., p. 21) shows that McNamara did assign to Sheckels $7,306.25 of said amounts due under contracts 415, 716, and extensions.

Finding V (Rec., p. 22) shows that the counterclaim, pleaded by appellee, arose under contract 248, which was not assigned to Sheckels.

Finding X (Rec., p. 24) shows that the District had due notice of the assignments to Sheckels.

The above findings are conclusive and justify a judgment in favor of appellant for $7,306.25, due and payable April 1, 1876.

The appellee, having failed to bring a cross-appeal, can not question the correctness of the judgment.

Chittenden *vs.* Brewster, 2 Wall., 191.

Wherefore, appellant prays that the judgment of the Court of Claims here appealed from be modified by striking therefrom the following words, to wit: "But said judgment shall bear interest only from the date of its rendition," as the same appear therein, beginning at line twenty, of page 25 of the record, and that the judgment, so modified, be affirmed.

Respectfully submitted.

JOHN RAUM,
*Attorney for Appellant.*

V. B. EDWARDS,
*Of Counsel.*

IN THE

# Supreme Court of the United States.

OCTOBER TERM, 1917.

No. 144.

HELEN C. SHECKELS, SURVIVING EXECUTRIX OF THEODORE SHECKELS, DECEASED, APPELLANT,

vs.

THE DISTRICT OF COLUMBIA.

APPEAL FROM THE COURT OF CLAIMS.

## REPLY BRIEF FOR APPELLANT.

JOHN RAUM,
*Attorney for Appellant.*

THE LAW REPORTER PRINTING COMPANY, WASHINGTON, D. C.

IN THE

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OCTOBER TERM, 1917.

No. 144.

HELEN C. SHECKELS, SURVIVING EXECUTRIX OF THEODORE SHECKELS, DECEASED,

*vs.*

THE DISTRICT OF COLUMBIA.

## APPELLANT'S REPLY BRIEF.

Counsel for Government contends that the assignments by McNamara to Sheckels were only as collateral security for the payment of money advanced by Sheckels and that Sheckels' equity is limited to the total of the advances so made by him and interest agreed upon, not to exceed the amounts due McNamara from the District under the contracts assigned.

Assuming for the sake of argument that this contention is correct, it is clear that the judgment for $7,306.25, with interest from February 21, 1916, falls far short of giving the estate of Sheckels the amount due it.

Under the assigned contracts there was due McNamara $7,306.25 on April 1, 1876. Under section 6 of the Act of June 16, 1880, said sum bears interest at 3.65 per cent per annum from April 1, 1876, until paid.

| | |
|---|---|
| Principal due | $7,306.25 |
| Interest at 3.65 to February 21, 1916 (39 years, 10 months and 20 days) | 10,637.55 |
| Amount due on contracts on February 21, 1916 | $17,944.80 |

On the admission of Government counsel appellant is entitled to recover the above sum of $17,944.80, if the amounts advanced by Sheckels, with the agreed interest, equal or exceed said amount on February 21, 1916, the date of the judgment.

Finding XI (Rec., p. 24) sets out the advances made by Sheckels to McNamara, to cover which (among others) the assignments were made. The court, however, fails to fix the date from which interest on the first item shall run. The suit was filed December 15, 1881, and as the payment must have been made before the filing of the suit, the date of the first item is fixed arbitrarily as of December 14, 1881, although as a matter of fact it was paid long before.

The account of advances made by Sheckels, with interest to February 21, 1916, is as follows:

| | |
|---|---|
| (1) Judgment for $255.79, with 6 per cent interest from December 14, 1881 | $781.55 |
| (2) Due bill for $776, of February 26, 1876, with 10 per cent interest | 3,103.97 |
| (3) Promissory note for $2,391.75, with 10 per cent interest from November 22, 1875 | 12,037.70 |
| (4) Promissory note for $400, with 8 per cent interest from December 17, 1874 | 1,317.68 |
| (5) Due bill for $60, of March 13, 1876, with 10 per cent interest | 299.63 |
| Total | $17,540.53 |

On defendant's own admission the judgment fails by over $10,000 to give appellant what she is entitled to be paid.

The assumption by Government counsel that $7,306.25 is all that is due under the assigned contracts is fallacious. The amount legally due is said sum with 3.65 per cent interest from April 1, 1876, to date of payment.

Under the Act of 1880 the court can enter judgment against the District in favor of appellant only for all or part of the amount due on the contracts. The law and the pleadings would not justify a judgment for the advances made by Sheckels to McNamara. Appellant must recover on the assignment and have judgment for the thing assigned if she recovers at all.

If appellant is not entitled to recover the entire amount due on the contracts and the contention of the Government is to be sustained, then judgment for appellant should be for such sum as, drawing 3.65 per cent interest from April 1, 1876, would on February 21, 1916, amount to $17,540.53, which is the total of the advances, with interest. Such sum is $7,147.48.

There are no discrepancies in paragraphs 14 and 16 of the petition and the present contention of appellant. By paragraph 14 Sheckels alleged that the assignment and powers of attorney were given him to enable him to collect from the District the money due on the assigned contracts to reimburse himself for advances made to McNamara, and that said assignment is an absolute assignment and confers upon him the right to collect from the District all sums due for work done under contract 415 and its extensions.

In paragraph 16 Sheckels enumerates the various amounts due (as he supposes), with the dates from which interest was to run and claims judgment for the same, totaling $6,932.15.

On the accounting before the referee, it appeared that the amounts due aggregated $7,306.25, and not $6,-932.15. And the court, at the first trial and also at the second trial, holding that the assignment to Sheckels was absolute for the amounts due, gave judgment for $7,306.25.

The court does not find that the items of advances (Finding XI, Rec., p. 24) were due April 1, 1876, but finds that the items, constituting the $7,306.25, were due and payable on said date, as set out in Finding III (Rec., p. 21).

If appellant's contention is sustained, she will not receive interest on interest, but will receive only the amount assigned with interest from the date it became due.

At the trial the defendants sought to defeat in toto appellant's claim and did not admit or seek to show that any sum was due her.

The Government's contention that the assignment was a mere collateral security is defeated by Finding IV (Rec., p. 21), by which the court finds that McNamara absolutely assigned to Sheckels the sum of $7,306.25 due under the contracts.

Finding IX (Rec., pp. 22, 23, 24) is a recital of some of the evidence in the case, is not the finding of an ultimate fact, and is surplusage.

Finding XI (Rec., p. 24) sets out part of the consideration for the assignment and shows its validity, and is surplusage.

By Findings III and IV (Rec., p. 21) the court finds that on April 1, 1876, under contracts Nos. 415 and 716 and extensions, there was due and payable by the District the sum of $7,306.25, which had been duly assigned by the contractor to Sheckels.

And appellant contends that she is entitled to recover said sum, with 3.65 per cent interest, from the day it

became due to the date of payment, as provided by section 6 of the Act of 1880.

And she contends that the interest is a matter of right and not by way of damage, and is not matter of discretion.

Respectfully submitted.

JOHN RAUM,
*Attorney for Appellant.*

V. B. EDWARDS,
*Of Counsel.*

# In the Supreme Court of the United States.

OCTOBER TERM, 1917.

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HELEN C. SHECKELS, SURVIVING EXECUTRIX of Theodore Sheckels, deceased, appellant,

*v.*

THE DISTRICT OF COLUMBIA.

No. 144.

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*APPEAL FROM THE COURT OF CLAIMS.*

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## BRIEF FOR THE UNITED STATES.

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### STATEMENT.

This is an appeal from a judgment rendered under the act of June 16, 1880 (21 Stat. 284), providing for the settlement of all outstanding claims against the District of Columbia and conferring jurisdiction on the Court of Claims.

One Peter McNamara had several contracts with appellee for grading and filling certain streets in the city of Washington. These contracts, and extensions thereof, were numbered 415, 515, 716, and 850. (Rec. 20.)

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McNamara, being indebted to Theodore Sheckels, appellant's testator, for advances made for the purpose of assisting the former in carrying out his contracts, executed and delivered to the latter as security an instrument purporting to be an assignment of the said McNamara's interest in and to contract 415, and extensions thereof, up to the amount of the indebtedness, and power of attorney to make effective said assignment. (Rec. 22, 23.) Powers of attorney were also executed by McNamara and delivered to appellant's testator to collect and receipt for all moneys, certificates, and bonds that might become due for work done under extension of contract 716. (Rec. 23, 24.)

Thereafter McNamara brought suit seeking adjudication of his alleged claims under contracts 415, 515, 716, and 850. These suits were consolidated with the one in which the present appeal is taken (known as No. 292, D. C.), which was filed by Theodore Sheckels as assignee of Peter McNamara. (Rec. 21.)

They were tried together before a referee, who reported that there was due from appellee, the District of Columbia, under said contracts for work at contract rates, the total sum of $14,418.77; that McNamara had assigned to Theodore Sheckels ~~all his interest in contracts 415 and 716, amounting to~~ $7,306.25, which was a part of the said sum of $14,418.77. (Rec. 21.)

Appellee interposed as a defense its counterclaim of $21,123.18 for overpayments made by it

to McNamara for work done under another contract, No. 248, which was not assigned to Sheckels. The referee found that appellee was entitled to judgment for $21,123.18, the amount of the counterclaim, less $14,418.77, the amount which he had found to be due under the four previously mentioned contracts. (Rec. 21.)

Sheckels excepted to the report of the referee as to the finding for appellee on its counterclaim, and the court decided that the effect of the act of February 13, 1895 (28 Stat. 264) was to extinguish the counterclaim. Thereupon, on June 22, 1896, the court, after rendering judgment in favor of McNamara for the amount to which he was deemed entitled, entered judgment for the executrix of Sheckels, for $7,306.25 with interest from April 1, 1876. (Rec. 22.)

The Supreme Court reversed the decision of the Court of Claims and remanded the cases for further procedings on February 15, 1897. (Rec. 22; *D. C.* v. *Johnson,* 165 U. S. 330.)

Before any action was taken under the mandate of the Supreme Court, the act of February 15, 1895, was repealed by the act of March 3, 1897 (29 Stat. 669). (Rec. 22.)

On April 20, 1914, appellant filed a motion for judgment in her favor in the sum of $7,306.25, due and payable as of April 1, 1876, under the aforesaid mandate of the Supreme Court (Rec. 19), and the same was allowed.

The court also found that though the referee had reported that no acceptance of the assignment by the District had been established "*it appears that said Sheckels receipted for certain certificates of indebtedness under said contracts and extensions as 'attorney for Peter McNamara,'*" (Rec. 24); that the indebtedness of McNamara to Sheckels comprised a judgment against the former which had been paid by Sheckels, two due bills and two promissory notes the principal amounts of which aggregated $3,883.54, which with interest computed to June 22, 1896, "*amounts to more than the sum claimed*" (Rec. 24).

The court gave appellant judgment for $7,306.25, and found that the total sum of the items set forth in Finding XI (Rec. 24) was due and payable by the District of Columbia April 1, 1876. It directed that the judgment should bear interest only from the date of its rendition, being February 21, 1916, payable as provided by section 6 of the act of June 16, 1880 (21 Stat. 284).

Appellant's contention is that the assignment and powers of attorney carried the entire interest of McNamara in the contracts and gave appellant the right (Rec. 5) to collect and receive "all moneys, bonds, certificates, or other evidence of indebtedness due from the said District on account of any and all work done by the said McNamara" under contracts 716 and 415; that this indebtedness (Rec. 5), amounting to $6,932.15, was made up of several

items bearing interest at different dates; that the items were, by the act of June 16, 1880 (21 Stat. 284), and acts amendatory thereto, payable in bonds with coupons attached bearing interest at the rate of 3.65 per cent per annum, which interest was to run from the date when the principal was due and payable; that the court rightly found the amount of McNamara's interest in the said contracts to be $7,306.25, notwithstanding that he prayed for $6,932.15, but was in error in finding that interest began from date of judgment, for this cut off his right to the coupons attached to the bonds with which the claim was to be paid.

The Government's position is that the assignment and powers of attorney were given as collateral security and were in the nature of a mortgage securing the payment of debts from McNamara to Sheckels; that the assignment and powers of attorney provided for payment of the amounts advanced, together with their prescribed interest (Finding XI, Rec. 24), until the total of the principal sums and interest should equal McNamara's equities in said contracts 716 and 415 and no more; that the principal sums and interest were more than McNamara's equities. The court, therefore, made no error in allowing only up to McNamara's equities.

**The assignment and powers of attorney were in the nature of collateral security for the payment of moneys advanced by Sheckels to McNamara. Sheckels's equity was limited to the total of these several advances and interest agreed upon (Finding XI, Rec. 24), the principal sums, and interest not to exceed McNamara's interest in the contracts.**

This case has been very much confused by appellant owing to the fact that the amount of the judgment allowed by the court—$7,306.25—happens to be the amount of McNamara's interest in contracts 716 and 415. The Government agrees at the outset with the findings of the lower court ~~stating~~ in substance that the District of Columbia acquiesced in the terms of the purported assignment and powers of attorney from McNamara to Sheckels in contracts 716 and 415. It appears (Rec. 24, Finding X) that Sheckels receipted for certain certificates of indebtedness under said contracts and extensions as "attorney for Peter McNamara." The judgment of the court fixed the amount at $7,306.25, the judgment to bear interest only from the date of its rendition and to be payable as provided by section 6 of the act of June 16, 1880 (21 Stat. 284) as amended by the act of March 3, 1881 21 Stat. 466).

From the foregoing it is evident that the lower court found that the District of Columbia recog-

nized that there had been security given by McNamara to Sheckels in order to protect Sheckels for advancements made by him to McNamara, and that the District of Columbia had estopped itself from setting up any counter claim by reason of having recognized the contents of the assignment and powers of attorney. The gist of this case can only be determined by reference to the assignment and powers of attorney. Exhibit G, which purported to be an assignment and power of attorney from McNamara to appellant (Rec. 23, Finding IX), states that it was given in order that McNamara might "*secure to said Sheckels the payment of such note and interest and all other advances that he might make,*" and, again, "for the purpose *of paying the said Sheckels the abovenamed note as also any and all moneys that he, the said Sheckels, may advance to me from time to time as the work progresses up to the completion of said streets* * * *." Exhibit H was a power of attorney to collect and receipt for moneys, certificates, or bonds that might become due McNamara under extension of contract 716. (Rec. 23, 24.) Exhibit I was a similar power of attorney with respect to extension of contract 716, and Exhibits K and L with respect to extensions of contract No. 415. (Rec. 24.) The language used in the assignment and powers of attorney obviously does not transfer to Sheckels absolute title of McNamara's entire interest in the contract. It

simply gives Sheckles a collateral security for said advances in the nature of a mortgage. What the court has done in reality has been to transfer by foreclosure the amount of the notes and moneys advanced, together with the interest which was stated in the notes and advances when made. It will be found (Finding XI, Rec. 24) that these various amounts were five in number, being a judgment against McNamara which was paid by Sheckels and which bore interest at the rate of 6 per cent per annum; a due bill signed by McNamara and carrying interest at 10 per cent; a promissory note bearing interest at 10 per cent; a promissory note bearing interest at 8 per cent; and a due bill of McNamara's bearing interest at 10 per cent. The equity which Sheckels got by the purported assignment and powers of attorney was the amount of these sums up to the total of McNamara's interest in the said contracts. If the total amount of these items plus interest had aggregated less than $7,306.25, the court would have given judgment for less than $7,306.25, whereas the items plus interest being more the court gave $7,306.25, because it read the assignment and powers of attorney correctly as limiting the amount of the security which appellant had thus received to McNamara's equity in the contracts, to wit, $7,306.25. The Court of Claims found that the total amount of the notes and advances was $3,883.54 and that interest on the several amounts as

set forth in Finding XI, together with the total of the principal sums computed to June 22, 1896, the date of the entering of the first judgment, amounted to more than McNamara's interest in the said contracts. Hence it limited its judgment to $7,306.25 and found that the judgment should bear interest from the date of its rendition.

It has been said that appellant is confused because the amount of the judgment happened to be the same as the amount of McNamara's interests in contracts 716 and 415. This is evidenced by references in the petition. It is stated therein (Rec. 5) " that the said assignment and powers of attorney were given to your petitioner to secure to him the repayment of the money so advanced by him and to enable him to collect from the said District and reimburse himself for the moneys so advanced by him from time to time." This allegation taken alone discloses appellant as understanding that the assignment was only in the nature of a collateral security for moneys advanced and not an unqualified transfer of all title in said contracts. But appellant later, on the same page, contradicts the foregoing quotation by alleging that " he is informed and believes and so represents that the instrument mentioned in the twelfth paragraph of this petition and filed herewith as Exhibit G is an absolute assignment to him and confers upon him the right to collect and receive from the said District all moneys, bonds, certificates, or other evidence of indebtedness due

from the said District on account of any and all work done by the said McNamara under the provisions of the contract," etc.

By reference to section 16 (Rec. 5) of the petition, it appears that appellant was claiming for a series of amounts due to McNamara on her testator's contracts with the District of Columbia and totaling the sum of $6,932.15. In the prayer of the petition judgment is asked for said sum, with interest from the dates on which the items composing the total were due. While, therefore, in the fourteenth paragraph of the petition appellant gives two diametrically conflicting statements as to her understanding of what the purported assignments meant, she now tries to recover on the theory that said assignment and powers of attorney actually transferred all interest of McNamara in the said contracts to Sheckels, and this regardless of whether the indebtedness of McNamara to Sheckels equaled McNamara's interest in said contracts.

What the court did was not to give her McNamara's interest in the contracts, but McNamara's indebtedness to Sheckels plus interest up to the amount of McNamara's equities in the contracts.

If appellant's contention were sustained, she would be receiving not only the principal sums advanced, to wit, $3,883.54, together with the interest on the various items as set forth in Finding XI up to $7,306.25, but she would also be receiving in-

terest upon the interest already mentioned, from April 1, 1876, until the present time, by means of the coupons attached to the bonds, a situation which was never contemplated and for which the Court of Claims would not have power to render judgment.

Respectfully submitted.

HUSTON THOMPSON,
*Assistant Attorney General.*

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# SHECKELS, SURVIVING EXECUTRIX OF SHECKELS, *v.* DISTRICT OF COLUMBIA.

APPEAL FROM THE COURT OF CLAIMS.

No. 144. Argued January 28, 1918.—Decided March 18, 1918.

Under the Act of June 16, 1880, c. 243, 21 Stat. 284, as amended March 3, 1881, c. 134, 21 Stat. 566, conferring jurisdiction on the Court of Claims over certain claims against the District of Columbia,

a claimant is not entitled to receive interest as such, save any that may accrue after rendition of the judgment, where the recovery is not based upon a contract expressly stipulating for interest. Rev. Stats., § 1091.

The provision of § 6 of the Act of 1880, *supra*, for satisfying such judgments with bonds bearing coupons for interest from the date upon which the claims were due and payable, amounted to giving interest, at a limited rate, before and after judgment, where payment was made in that mode; but where the amount of such bonds remaining unissued, of the maximum authorized by that section, was less than the amount of the claim allowed, the Court of Claims properly adjudged that, with respect to any part of the claim not paid in that special manner, there was no right to interest prior to the rendition of the judgment.

Affirmed.

THE case is stated in the opinion.

*Mr. John Raum*, with whom *Mr. V. B. Edwards* was on the briefs, for appellant.

*Mr. Assistant Attorney General Thompson* for appellee.

MR. JUSTICE PITNEY delivered the opinion of the court.

This is an appeal by claimant in a suit that was commenced by her testator in the Court of Claims in the year 1880, under Act of June 16, 1880, c. 243, 21 Stat. 284. A judgment was rendered in claimant's favor after the amendatory Act of February 13, 1895, c. 87, 28 Stat. 664 (*Johnson* v. *District of Columbia*, 31 Ct. Clms. 395), which judgment was reversed by this court in 1897, and the cause remanded for further proceedings (*District of Columbia* v. *Johnson*, 165 U. S. 330). After a long delay, proceedings were had which resulted in a judgment in favor of claimant February 21, 1916, from which the District of Columbia has not appealed.

Claimant's appeal relates to the question of interest

upon the amount recovered. The form of the judgment is that the claimant "do have and recover of and from the District of Columbia in the manner provided by the Act of June 16, 1880, Chapter 243, Seven thousand three hundred and six dollars and twenty-five cents ($7,306.25). Said amounts were due and payable April 1, 1876, but said judgment shall bear interest only from the date of its rendition, and is payable as provided by section 6 of the Act of June 16, 1880 (21 Stat. L., p. 284), as amended by the Act of March 3, 1881 (21 Stat. L., p. 466)." There is no finding that the claim is based upon a contract expressly stipulating for the payment of interest.

It is insisted that the court erred in allowing interest only from the date of judgment, rather than from April 1, 1876, the day on which the claim became due and payable.

The Act of 1880, in its first section, conferred jurisdiction upon the Court of Claims over all claims then existing against the District of Columbia arising out of certain operations of the District government during the preceding decade; and as to procedure it declared: "Said Court of Claims shall have the same power, proceed in the same manner, and be governed by the same rules, in respect to the mode of hearing, adjudication, and determination of said claims, as it now has in relation to the adjudication of claims against the United States." This, if it stood alone, would leave the question of interest to be governed by the general principle that interest is not recoverable from the government, embodied in § 1091, Rev. Stats.: "No interest shall be allowed on any claim up to the time of the rendition of judgment thereon by the Court of Claims, unless upon a contract expressly stipulating for the payment of interest," still in force as § 177, Judicial Code, 36 Stat. 1141, c. 231.

But other sections of the Act of 1880 contain provisions that must be considered. By § 5 it was enacted that, where no appeal was taken, or on affirmance of a judgment

in favor of the claimant, "the sum due thereby shall be paid, as hereinafter provided, by the Secretary of the Treasury," upon presentation to him of a copy of the judgment properly certified. And by § 6 the Secretary was authorized to demand of the sinking fund commissioner of the District of Columbia so many of the 3.65 per cent. bonds authorized by Act of Congress approved June 20, 1874, c. 337, 18 Stat. 120, and amendatory acts, as might be necessary for the payment of the judgments; "which bonds shall be received by said claimants at par in payment of such judgments, and shall bear date August first, eighteen hundred and seventy-four, and mature at the same time as other bonds of this issue; *Provided*, That before the delivery of such bonds as are issued in payment of judgments rendered as aforesaid on the claims aforesaid, the coupons shall be detached therefrom from the date of said bonds to the day upon which such claims were due and payable; and the gross amount of such bonds heretofore and hereafter issued shall not exceed in the aggregate fifteen millions of dollars." By amendment of March 3, 1881, c. 134, 21 Stat. 458, 566, the Treasurer of the United States as *ex officio* sinking fund commissioner was authorized, whenever in his opinion it would be more advantageous for the interest of the District of Columbia to do so, to sell the bonds and pay the judgments from the proceeds of the sales instead of delivering the bonds to the claimants.

Under the Act of 1880, the Court of Claims held that it was necessary it should determine when the claims were due and payable within the meaning of the act, and specify the date in the judgment, in order that the Secretary of the Treasury might know what coupons, if any, were to be detached from bonds delivered by him in payment. *Fendall's Case*, 16 Ct. Clms. 106, 121. See *District of Columbia* v. *Johnson*, 165 U. S. 330, 336.

Construing §§ 1, 5, and 6 of the Act of 1880 in connec-

tion with § 1091, Rev. Stats., it is plain that the claimant in such a judgment is not entitled to a recovery of interest as such, saving any that may accrue after the rendition of the judgment, unless the recovery be based upon a contract expressly stipulating for the payment of interest. Section 6, however, provided a special fund out of which claims of this character might be paid, and as this consisted of coupon bonds dated in 1874 and maturing 50 years later, the provision to the effect that coupons maturing after the date upon which the claim was due and payable should accompany the bonds amounted to giving interest at a limited rate, before and after judgment, where payment was made in that mode.

But this special mode of payment was qualified by a proviso that the gross amount of such bonds should not exceed $15,000,000; and, as it happens, all except $2,700 had been issued prior to the entry of the judgment now under review. This is admitted in appellant's brief, and may be additionally verified by reference to Annual Report of the Secretary of the Treasury on the State of the Finances for the fiscal year ended June 30, 1915, p. 122; like report for the following fiscal year, p. 92.

It was not erroneous for the Court of Claims to take note of the fact that, at the utmost, only a part of the claim could be paid in bonds or from the proceeds of bonds, and that with respect to any part not paid in this special manner there was no right to interest prior to the rendition of the judgment. This is the effect of the judgment as entered.

*Affirmed.*

MR. JUSTICE MCREYNOLDS took no part in the consideration or decision of this case.